



REGISTER

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I. IN ADDITION
Voting Rights Letters 901 - 903

II. PROPOSED RULES
Administrative Hearings, Office of
Hearings Division 997 - 998
Rules Division 991 - 997
Environment and Natural Resources
Health Services, Commission for 957 - 989
Health and Human Services
Child Care Commission 904 - 917
Medical Care Commission 917 - 957
Licensing Boards
Cosmetic Art Examiners 990 - 991
State Treasurer
Retirement Systems Division, Board of
Trustees for the TSERS 989 - 990

III. TEMPORARY RULES
Agriculture and Consumer Services
Agriculture, Board of 999

IV. RULES REVIEW COMMISSION 1000 - 1005

V. CONTESTED CASE DECISIONS
Index to ALJ Decisions 1006 - 1010
Text of Selected Decisions
03 DHR 0226 1011 - 1015

For the CUMULATIVE INDEX to the NC Register go to:
<http://oahnt.oah.state.nc.us/register/CI.pdf>

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board (Repealed)
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterater (Reserved)	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing Board	
22	ADMINISTRATIVE PROCEDURES (REPEALED)	30 Massage & Bodywork Therapy	
23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
24*	INDEPENDENT AGENCIES	32 Medical Examiners	
25	STATE PERSONNEL	33 Midwifery Joint Committee	
26	ADMINISTRATIVE HEARINGS	34 Funeral Service, Board of	
27	NC STATE BAR	36 Nursing	
28	JUVENILE JUSTICE AND DELINQUENCY PREVENTION	37 Nursing Home Administrators	
		38 Occupational Therapists	
		40 Opticians	
		42 Optometry	
		44 Osteopathic Examination (Repealed)	
		45 Pastoral Counselors, Fee-Based Practicing	
		46 Pharmacy	
		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology Board	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal Board	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care Board	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical Board	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2004 – December 2004

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD
(1) RULE WITH NON-SUBSTANTIAL**

ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

JDR:TCH:RJD:par
DJ 166-012-3
2003-3351

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

November 7, 2003

Mr. Gary O. Bartlett
Executive Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2003-142, which clarifies the procedures for filling candidate vacancies, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 9, 2003.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice
Civil Rights Division

JDR:MSR:TGL:jdh
DJ 166-012-3
2003-3401

Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530

November 7, 2003

Mr. Gary O. Bartlett
Executive Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2003-183, which changes the schedule for the reporting of absentee voting by precinct and Session Law 2003-365, which pertains to the use of non-public buildings as polling places in special circumstances, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 9, 2003.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:JR:NG:par
DJ 166-012-3
2003-3399

*Voting Section – NWB.
950 Pennsylvania Ave., NW
Washington, D.C. 20530*

November 7, 2003

Mr. Gary O. Bartlett
Executive Director
State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

Dear Mr. Bartlett:

This refers to Session Law 2003-209, which requires the State Board of Elections to establish review procedures for local boards with regard to ballot format; and Session Law 2003-218, which pertains to a new classification of township authorized to conduct special alcohol referendum elections, including the specifications regarding the name and boundary of affected townships and territory to be excluded from such elections, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on September 9, 2003; supplemental information was received on October 29, 2003.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Session Laws 2003-209 and 2003-218, include provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to these laws will be subject to Section 5 review (e.g., establishment of review procedures by the State Board of Elections and the procedures for local jurisdictions to conduct special elections). See 28 C.F.R. 51.15.

Sincerely,

Joseph D. Rich
Chief, Voting Section

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to adopt the rules cited as 10A NCAC 09 .0606, .1724 and amend the rules cited as 10A NCAC 09 .0102, .0511, .0705, .0707, .0714, .0803, .1705, .1718, .1720.

Proposed Effective Date: May 1, 2004

Public Hearing:

Date: February 4, 2004

Time: 5:00 p.m. – 7:00 p.m.

Location: NC Division of Child Development, 319 Chapanoke Rd., Suite 120, Raleigh, NC

Reason for Proposed Action: *This year, the NC General Assembly passed HB 152 and SB 226 which impact the licensing requirements for child care facilities. HB 152 requires child care facilities that care for infants to place infants on their backs to sleep, to develop policies on safe sleep environments, and for infant caregivers to complete training on safe sleep practices. SB 226 establishes criminal penalties for administering medication to children in child care facilities without parental authorization. The Child Care Commission proposes amending and adopting rules to implement these laws, and to propose some additional changes to the rules under revision.*

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to comment on these proposed rules or to request copies of the rules should contact Janice Fain, APA Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, (919) 662-4543, or Janice.fain@ncmail.net. Written comments will be accepted through February 13, 2004. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.*

Written comments may be submitted to: *Janice Fain, APA Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-2201, (919) 662-4543, fax (919) 662-4568 or Janice.fain@ncmail.net.*

Comment period ends: February 13, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the

Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

State 10A NCAC 09 .0705, .1705, .1724

Local 10A NCAC 09 .0705, .1705, .1724

Substantive (≥\$3,000,000)

None 10A NCAC 09 .0102, .0511, .0606, .0707, .0714, .0803, .1718, .1720

CHAPTER 09 – DAY CARE RULES

SECTION .0100 – DEFINITIONS

10A NCAC 09 .0102 DEFINITIONS

The terms and phrases used in this Subchapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development and the Division of Child Development on the elements of quality school-age care.
- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2 (a) (2) a. and used in Section .2700 of this Subchapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.

PROPOSED RULES

- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Subchapter, using space which is identifiable for each group.
- (13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (14) "Infant/Toddler Environment Rating Scale" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "ITS-SIDS Training" means the Infant/Toddler Safe Sleep and SIDS Risk Reduction Training developed by the NC Healthy Start Foundation and the Division of Child Development for caregivers of children ages 12 months and younger.
- ~~(15)~~(16) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- ~~(16)~~(17) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual published jointly under the authority of the Department and the Department of Community Colleges. These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.
- ~~(17)~~(18) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.
- (19) "Owner" means any person with a five percent or greater equity interest in a child care facility, whether that interest is held directly or through a trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization or association.
- ~~(18)~~(20) "Parent" means a child's parent, legal guardian, or full-time custodian.
- ~~(19)~~(21) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.

- ~~(20)~~(22) "Passageway" means a hall or corridor.
- ~~(23)~~ "Person, as used in the definition of "owner" in Item (19) of this Rule, means any individual, trust, estate, partnership, corporation, joint stock company, consortium, or any other group, entity, organization, or association."
- ~~(21)~~(24) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.
- ~~(22)~~(25) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- ~~(23)~~(26) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.
- ~~(24)~~(27) "Seasonal Program" means a recreational program as set forth in G. S. 110-86(2)(b).
- ~~(25)~~(28) "Section" means Division of Child Development.
- ~~(26)~~(29) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- ~~(27)~~(30) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.
- ~~(28)~~(31) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

Authority G.S. 110-88; 143B-168.3.

SECTION .0500 - AGE APPROPRIATE ACTIVITIES FOR CENTERS

10A NCAC 09 .0511 ACTIVITIES FOR CHILDREN UNDER TWO YEARS OF AGE

(a) Each center shall have developmentally appropriate toys and activities for each child to promote the child's physical, emotional, intellectual and social well-being including appropriate books, blocks, dolls, pretend play materials, musical toys, sensory toys, and fine motor toys.

- (1) The materials shall be kept in an identifiable space where related equipment and materials are kept in identifiable groupings and must be made available to the children for a substantial portion of each day.
- (2) The materials shall be offered in sufficient quantity to allow all children to use them at some point during the day and to allow for a range of choices with duplicates of the most popular toys.
- (3) Caregivers shall make provisions for the promotion of physical development for a substantial portion of the day which shall include varied, developmentally appropriate physical activities. A safe clean, uncluttered area shall be available for infants to crawl or creep and for toddlers to move around.
- (4) Hands-on experiences, including both familiar and new activities, shall be provided to enable the infant or toddler to learn about himself and the world.

(b) The center shall provide time and space for sleeping, eating, toileting, diaper changing, and playing according to each child's individual need.

(c) The caregivers shall interact in a positive manner with each child every day, including the following ways:

- (1) Caregivers shall respond promptly to an infant or toddler's physical and emotional needs, especially when indicated by crying through actions such as but not limited to the following: feeding, diapering, holding, positive touching, smiling, talking and eye contact.
- (2) The caregiver shall recognize the special difficulties of infant and toddler separations and assist families, infants, and toddlers to make the transition from home to center as gently as possible, such as a phased-in orientation process to allow infants and toddlers to experience limited amounts of time at the center before becoming fully integrated.
- (3) A caregiver or team of caregivers shall be assigned to each infant or toddler as the primary caregiver(s) who shall be responsible for care the majority of the time.
- (4) The caregiver shall make provision for constructive guidance and the setting of clearly defined limits which foster the infant's or

- toddler's ability to be self-disciplined, as appropriate to the child's age and development.
- (5) In drop-in centers, every effort shall be made to place an infant or toddler, who uses the center frequently, with the same caregiver.
- (d) Each child shall have the opportunity to be outdoors daily when weather conditions permit.
- (e) While awake, each child under the age of 12 months shall be given the opportunity each day to play while positioned on his or her stomach.

Authority G.S. 110-91(2),(12); 143B-168.3.

SECTION .0600 - SAFETY REQUIREMENTS FOR CHILD CARE CENTERS

10A NCAC 09 .0606 SAFE SLEEP POLICY

- (a) Each center licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:
- (1) specifies that caregivers shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged six months or less, the center receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8); or
 - (B) for a child older than six months, the center receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8), or a parent, or a legal guardian;
 - (2) specifies whether pillows, blankets, toys, or other objects may be placed with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
 - (3) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
 - (4) specifies the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75 degrees F;
 - (5) specifies the means by which caregivers shall visually check on sleeping infants aged 12 months or younger;
 - (6) specifies the frequency with which caregivers shall visually check on sleeping infants aged 12 months or younger;
 - (7) specifies how caregivers shall document compliance with visually checking on sleeping infants aged 12 months or younger with such documents to be maintained for a minimum of one month; and
 - (8) specifies any other steps the center shall take to provide a safe sleep environment for infants aged 12 months or younger.

Number of children present
 1-29
 30-79

Number of staff trained in first aid required
 1 staff
 2 staff

- (b) The center shall post a copy of its safe sleep policy or a poster about infant safe sleep practices in a prominent place in the infant room.
- (c) A copy of the center's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the center. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:
- (1) the infant's name;
 - (2) the date the infant first attended the center;
 - (3) the date the center's safe sleep policy was given and explained to the parent; and
 - (4) the date the parent signed the acknowledgement.

The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.

- (d) If a center amends its safe sleep policy, it shall give written notice of the amendment to the parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The center shall retain the acknowledgement in the child's record as long as the child is enrolled at the center.
- (e) A health care provider's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping as specified in Subparagraph (a)(1) of this Rule shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's physician or parent; and
- (3) specify the infant's authorized sleep positions;

The center shall retain the waiver in the infant's record as long as the child is enrolled at the center. A written copy of the waiver shall be posted for quick reference near the infant's crib, bassinet, or play pen and shall specify the infant's authorized sleep positions.

- (f) The policy shall be developed and shared with parents of infants currently enrolled within 30 days of this Rule becoming effective.

Authority G.S. 110-91(15); 143B-168.3.

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS

- (a) At least one staff member shall be knowledgeable of and able to recognize common symptoms of illness.
- (b) Staff who have completed within the last three years a course in basic first aid approved by the Division shall be present ~~at the center~~ at all times children are present. The number of staff required to complete the course shall be based on the number of children present ~~in the center~~ as shown in the following chart:

80 and above

3 staff

Verification of each required staff person's completion of this course shall be maintained in the person's individual personnel file in the center. The basic first aid course at a minimum shall address principles for responding to emergencies, rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(c) A first aid information sheet shall be posted in a prominent place for quick referral. An acceptable form may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center by calling 1-800-CHOOSE-1.

(d) Each child care center shall have at least one person on the premises at all ~~times~~ times, and at least one person who accompanies the children whenever they are off the premises, who has successfully completed within the last 12 months a cardiopulmonary resuscitation (CPR) course provided by either the American Heart Association or the American Red Cross or other organizations approved by the Division. Other organizations will be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. The course shall provide training in CPR appropriate for the ages of children in care. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the center.

(e) Staff shall complete at least four clock hours of training in safety approved by the Division. At a minimum, this training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. The number of staff required to complete this training shall be as follows:

- (1) In centers with a licensed capacity of less than 30 children, at least one staff person shall complete this training.
- (2) In centers with a licensed capacity of 30 or more children, at least two staff, including the administrator, shall complete this training.

(f) In centers that are licensed to care for infants ages 12 months and younger:

- (1) the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training;
- (2) ITS-SIDS training shall be completed within six months of the individual assuming responsibilities in the infant room or as an administrator, or within six months of these rules becoming effective, whichever is later;
- (3) completion of ITS-SIDS training may be included once in the number of hours needed to meet annual in-service training

requirements in Section .0700 of this Subchapter;

- (4) individuals who have completed ITS-SIDS training as approved by the Division prior to this Rule becoming effective shall not be required to repeat the training; and
- (5) prior to an individual assuming responsibility for the care of an infant, the center's safe sleep policy for infants shall be reviewed with the individual as required by Rule .0707(a).

Authority G.S. 110-91(1),(8); 143B-168.3.

10A NCAC 09 .0707 IN-SERVICE TRAINING REQUIREMENTS

~~(a) Each child care center shall provide, or arrange for the provision of, training for staff to assure that each new staff person who has contact with the children will receive a minimum of 10 clock hours of onsite orientation within the first six weeks of employment. This orientation shall include training in their job specific duties and responsibilities; a review of the child care licensing law and regulations; a review of the individual center's personnel and operational policies, purposes and goals; an explanation of the role of state and local government agencies, their effect on the center, their availability as a resource, and individual staff responsibilities to representatives of State and local government agencies; observation of center operations; maintaining a safe and healthy environment; and training to recognize symptoms of child abuse and neglect.~~

(a) Each center shall assure that each new employee who is expected to have contact with children receives a minimum of 10 clock hours of on-site training and orientation within the first six weeks of employment. This training and orientation shall include:

- (1) first-hand observation of the center's daily operations;
- (2) instruction in the employee's assigned duties;
- (3) instruction in the maintenance of a safe and healthy environment;
- (4) training in the recognition of the signs and symptoms of child abuse and neglect and in the employee's duty to report suspected abuse and neglect;
- (5) review of the center's purposes and goals;
- (6) review of the center's personnel policies;
- (7) review of the center's operational policies, including the center's safe sleep policy for infants;
- (8) review of the child care licensing law and regulations;
- (9) an explanation of the role of State and local government agencies in the regulation of child care, their impact on the operation of the center, and their availability as a resource; and
- (10) an explanation of the employee's obligation to cooperate with representatives of State and local government agencies during visits and investigations.

PROPOSED RULES

(b) The child care administrator and any staff who have responsibility for planning and supervising a child care program, as well as staff who work directly with children, shall participate in in-service training activities annually, according to the individual's assessed needs. Staff may choose one of the following options for meeting the in service requirement:

- (1) Each staff person shall complete in service training required in G.S. 110-91(11) as specified in the following Parts:
 - (A) persons with a four year degree or higher advanced degree in a child care related field of study from a regionally accredited college or university shall complete five clock hours of training annually.
 - (B) persons with a two year degree in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Administration Credential or its equivalent shall complete eight clock hours of training annually.
 - (C) persons with a certificate or diploma in a child care related field of study from a regionally accredited college or university, or persons with a North Carolina Early Childhood Credential

- or its equivalent shall complete 10 clock hours of training annually.
- (D) persons employed on or after September 1, 1986 with at least 10 years documented, professional experience as a teacher, director, or caregiver in a licensed child care arrangement shall complete 15 clock hours of training annually.
- (E) all other persons shall complete 20 clock hours of training annually.

- (2) For staff listed in Parts (b)(1), (A), (B), (C) and (D) of this Rule, basic cardiopulmonary resuscitation (CPR) training required in Rule .0705 of this Section shall not be counted toward meeting annual in-service training. First aid training may be counted once every three years.
- (3) If a child care administrator or lead teacher is currently enrolled in coursework to meet the staff qualification requirements in G.S. 110-91(8), the coursework may be counted toward meeting the annual in-service training requirement.

(c) For staff working less than 40 hours per week on a regular basis and choosing the option for 20 hours of in service training, the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

Authority G.S. 110-91(11); 143B-168.3.

10A NCAC 09 .0714 OTHER STAFFING REQUIREMENTS

(a) Each child care center shall have an administrator on site on a regular basis. The administrator shall be responsible for monitoring the program and overseeing administrative duties of the center. This requirement may be met by having one or more persons on site who meet the requirements for an administrator according to the licensed capacity of the center. The following hourly requirements are based on an administrator's normal working schedule and may include times when the administrator may be off site due to administrative duties, illness, or vacation.

- (1) Each center with a licensed capacity of less than 30 children shall have an administrator on site for at least 20 hours per week.
- (2) Each center with a licensed capacity of 30 to 79 children shall have an administrator on site for at least 25 hours per week.
- (3) Each center with a licensed capacity of 80 to 199 children shall have an administrator on site for at least 30 hours per week.

(4) Each center with a licensed capacity of 200 or more children shall have an administrator on site for at least 40 hours per week.

(b) At least one person who meets the requirements for an administrator or lead teacher as set forth in this Section shall be on site during the center's operating hours except that a person who is at least 18 years old with at least a high school diploma or its equivalent and who has a minimum of one year's experience working with children in a child care center may be on duty at the beginning or end of the operating day provided that:

- (1) No more than 10 children are present.
- (2) The staff person has worked in that center for at least three months.
- (3) The staff person is thoroughly familiar with the center's operating policies and emergency procedures.

(c) At least one person who meets the requirements for a lead teacher shall be responsible for each group of children as defined in Rule .0102 of this Subchapter except as provided in Paragraph (b) of this Rule. This requirement may be met by having one or

more persons who meet the requirements for a lead teacher responsible for the same group of children. Each lead teacher shall be responsible for only one group of children at a time. Each group of children shall have a lead teacher in attendance for at least two-thirds of the total daily hours of operation, based on a normal working schedule and may include times when the lead teacher may not be in attendance due to circumstances such as illness or vacation.

(d) A teacher is a person who is responsible to the lead teacher and assists with planning and implementing the daily program.

(e) An aide shall not have full responsibility for a group of children except as provided in Paragraph (b) of this Rule.

(f) Children shall be adequately supervised at all times. Adequate supervision shall mean that staff interact with the children while moving about the indoor or outdoor area, and are able to hear and see the children at all times, except when emergencies necessitate that direct supervision is impossible for brief periods of time.

(g) For groups of children aged two years or older, the staff/child ratio during nap time is considered in compliance if at least one person is either in each room or is visually supervising all the children and if the total number of required staff are on the premises and within calling distance of the rooms occupied by children.

(h) When a child is sleeping, bedding or other objects shall not be placed in a manner that covers the child's face.

Authority G.S. 110-85(1); 110-91(7),(8); 143B-168.3.

SECTION .0800 - HEALTH STANDARDS FOR CHILDREN

10A NCAC 09 .0803 ADMINISTERING MEDICATION

~~(a) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication shall be administered after its expiration date. No drug or medication shall be administered for non-medical reasons, such as to induce sleep.~~

~~(1) Prescribed medicine shall be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine shall be administered as authorized in writing by the child's parent, only to the person for whom it is prescribed.~~

~~(2) Over the counter medicines, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical teething medication, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be in its original container and shall be administered as authorized in writing by the child's parent, not to exceed amounts and frequency of dosage~~

~~specified in the printed instructions accompanying the medicine. The parent's authorization shall give the child's name, the specific name of the over the counter medicine, dosage instructions, the parent's signature, and the date signed. Over the counter medicine may also be administered in accordance with written instructions from a physician or other authorized health professional.~~

~~(3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.~~

~~(4) A written statement from a parent may give blanket permission for up to six months to authorize administration of medication for asthma and allergic reactions. A written statement from a parent may give blanket permission for up to one year to authorize administration of sunscreen and over the counter diapering creams. The written statement shall describe the specific conditions under which these medications and creams are to be administered and detailed instructions on how they are to be administered.~~

~~(5) A written statement from a parent may give blanket permission to administer a one time, weight appropriate dose of acetaminophen in cases where the child has a fever and the parent cannot be reached.~~

~~(b) Any medication remaining after the course of treatment is completed shall be returned to the child's parents.~~

~~(c) Any time medication other than sunscreen or diapering creams is administered by center personnel to children receiving care, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered.~~

If a center chooses to administer medication, the following provisions shall apply:

- (1) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream or powder shall be administered to any child:
 - (a) without written authorization from the child's parent;
 - (b) without written instructions from the child's parent, physician or other health professional;
 - (c) in any manner not authorized by the child's parent, physician or other health professional;
 - (d) after its expiration date; or

PROPOSED RULES

- (e) for non-medical reasons, such as to induce sleep.
- (2) Prescribed medications:
 - (a) shall be stored in the original containers in which they were dispensed with the pharmacy labels specifying:
 - (i) the child's name;
 - (ii) the name of the medication or the prescription number;
 - (iii) the amount and frequency of dosage;
 - (iv) the name of the prescribing physician or other health professional; and
 - (v) the date the prescription was filled; or
 - (b) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:
 - (i) the child's name;
 - (ii) the names of the medication;
 - (iii) the amount and frequency of dosage;
 - (iv) the signature of the prescribing physician or other health professional; and
 - (v) the date the instructions were signed by the physician or other health professional; and
 - (c) shall be administered only to the child for whom they were prescribed.
- (3) A parent's written authorization for the administration of a prescription medication described in Item (2) of this Rule shall be valid for the length of time the medication is prescribed to be taken.
- (4) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:
 - (a) the child's name;
 - (b) the names of the authorized over-the-counter medication;
 - (c) the amount and frequency of the dosages;
 - (d) the signature of the parent, physician or other health professional; and
 - (e) the date the instructions were signed by the parent, physician or other health professional.

- The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Items (6), (7), and (8) of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed in Paragraphs (6), (7), and (8) of this Rule.
- (5) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer that medication without signed, written dosage instructions from a licensed physician or authorized health professional.
- (6) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions and for allergic reactions. The authorization shall be in writing and shall contain:
 - (a) the child's name;
 - (b) the subject medical conditions or allergic reactions;
 - (c) the names of the authorized over-the-counter medications;
 - (d) the criteria for the administration of the medication;
 - (e) the amount and frequency of the dosages;
 - (f) the manner in which the medication shall be administered;
 - (g) the signature of the parent;
 - (h) the date the authorization was signed by the parent; and
 - (i) the length of time the authorization is valid, if less than six months.
- (7) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical non-medical ointments, topical teething ointment or gel, insect repellents, lotions, creams, and powders --- such as sunscreen, diapering creams, baby lotion, and baby powder --- to a child, when needed. The authorization shall be in writing and shall contain:
 - (a) the child's name;
 - (b) the names of the authorized ointments, repellents, lotions, creams, and powders;
 - (c) the criteria for the administration of the ointments, repellents, lotions, creams, and powders;
 - (d) the manner in which the ointments, repellents, lotions, creams, and powders shall be applied;
 - (e) the signature of the parent;
 - (f) the date the authorization was signed by the parent; and
 - (g) the length of time the authorization is valid, if less than 12 months.

**SECTION .1700 - FAMILY CHILD CARE HOME
REQUIREMENTS**

**10A NCAC 09 .1705 HEALTH AND TRAINING
REQUIREMENTS FOR FAMILY CHILD CARE HOME
OPERATORS**

- (8) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:
 - (a) the child's name;
 - (b) the signature of the parent;
 - (c) the date the authorization was signed by the parent; and
 - (d) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.
- (9) A parent may withdraw his or her written authorization for the administration of medications at any time in writing.
- (10) Any medication remaining after the course of treatment is completed or after authorization is withdrawn shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.
- (11) Any time prescription or over-the-counter medication is administered by center personnel to children receiving care, including any time medication is administered in the event of an emergency medical condition without parental authorization as permitted by G.S. 110-102.1A, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered. No documentation shall be required when items listed in Item (7) of this Rule are applied to children.
- (12) On the advice of the State Health Director or designee, medication may be administered in emergency situations by center personnel to children in care. The names of the children to whom the medication was administered shall be listed, along with the amount and type of medication that was administered, the date and the time the medication was administered, and the signature of the person administering the medication. This information shall be available for review by a representative of the Division for at least six months after the medication is administered.

- (a) Prior to receiving a license, each family child care home operator shall:
 - (1) Complete and keep on file a health questionnaire which attests to the operator's physical and emotional ability to care for children. The Division may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the operator's health may adversely affect the care of the children.
 - (2) Obtain written proof that he or she is free of active tuberculosis. The results indicating the individual is free of active tuberculosis shall be obtained within 12 months prior to applying for a license.
 - (3) Complete within 12 months prior to applying for a license a basic first aid course that at a minimum, shall address principles for responding to emergencies, techniques for rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.
 - (4) Successfully complete within 12 months prior to applying for a license a course by the American Heart Association or the American Red Cross or other organizations approved by the Division, in cardiopulmonary resuscitation (CPR) appropriate for the ages of children in care. Other organizations will be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the home.
- (b) After receiving a license, an operator shall:
 - (1) Update the health questionnaire referenced in Paragraph (a) of this Rule annually. The Division may require the operator to obtain written proof that he or she is free of active tuberculosis.
 - (2) Complete a first aid course as referenced in Paragraph (a) of this Rule every three years.
 - (3) Successfully complete a CPR course annually as referenced in Paragraph (a) of this Rule.

Authority G.S. 110-91(1),(9); 143B-168.3.

(4) If licensed to care for infants ages 12 months and younger, complete ITS-SIDS training within six months of receiving the license, or within six months of this rule becoming effective, whichever is later. Completion of ITS-SIDS training may be included once in the number of hours needed to meet the annual in-service training requirement in Paragraph (b)(5) of this Rule. Individuals who have completed ITS-SIDS training as approved by the Division prior to this rule becoming effective shall not be required to repeat the training.

(4)(5) Complete 12 clock hours of annual in-service training in the topic areas required by G.S. 110-91(11).

(A) Persons with at least 10 years work experience as a caregiver in a regulated child care arrangement shall complete eight clock hours of annual in-service training.

(B) Only training which has been approved by the Division as referenced in Rule .0708 of this Subchapter shall count toward the required hours of annual in-service training.

(C) The operator shall maintain a record of annual in-service training activities in which he or she has participated. The record shall include the subject matter, the topic area in G.S. 110-91(11) covered, the name of the training provider or organization, the date training was provided and the number of hours of training completed. First aid training may be counted once every three years.

Authority G.S. 110-88; 110-91; 143B-168.3.

10A NCAC 09 .1718 REQUIREMENTS FOR DAILY OPERATIONS

The operator shall provide the following on a daily basis for all children in care:

(1) meals and snacks which comply with the Meal Patterns for Children in Child Care standards which are based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The types of food and number and size of servings shall be appropriate for the ages and developmental levels of the children in care. The Meal Patterns for Children in Child Care nutrition standards are incorporated by reference and include subsequent amendments. A copy of these standards is available free of charge from the Division at the address in Rule .0102 of this Subchapter

(a) No child shall go more than four hours without a meal or a snack being provided.

(b) Drinking water shall be freely available to children and offered at frequent intervals.

(c) When milk, milk products, or fruit juices are provided by the operator, only pasteurized products or products which have undergone an equivalent process to pasteurization shall be used. Any formula which is prepared by the operator shall be prepared according to the instructions on the formula package or label, or according to written instructions from the child's health care provider.

(d) Each infant will be held for bottle feeding until able to hold his or her own bottle. Bottles will not be propped. Each child will be held or placed in feeding chairs or other age-appropriate seating apparatus to be fed.

(e) The parent or health care provider of each child under 15 months of age shall provide the operator an individual written feeding schedule for the child. This schedule shall be followed at the home. This schedule shall include the child's name, be signed by the parent or health care provider, and be dated when received by the operator. Each infant's schedule shall be modified in consultation with the child's parent and/or health care provider to reflect changes in the child's needs as he or she develops.

(2) frequent opportunities for outdoor play or fresh air.

(3) an individual sleeping space such as a bed, crib, play pen, cot, mat, or sleeping bag with individual linens for each pre-school aged child in care for four hours or more, or for all children if overnight care is provided, to rest comfortably. Individual sleep requirements for infants aged 12 months or younger shall be provided for as specified in 10A NCAC 09 .1724(a)(2). ~~The linens—Linens~~ shall be changed weekly or whenever they become soiled or wet.

(4) a quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents shall be notified immediately if their child becomes too sick to remain in care.

(5) visual supervision for all children who are awake. The operator shall be able to hear and respond quickly to those children who are sleeping or napping.

- (6) a safe sleep environment by ensuring that when a child is sleeping, bedding or other objects shall not be placed in a manner that covers the child's face.
- ~~(6)~~(7) developmentally appropriate activities as planned on a written schedule. Materials and/or equipment shall be available to support the activities listed on the written schedule. The written schedule shall:
 - (a) show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest; and
 - (b) be displayed in a place where parents are able to view; and
 - (c) reflect daily opportunities for both free-choice and guided activities.

- (5) have known chicken pox or a rash suggestive of chicken pox; or
- (6) have tuberculosis, until a health professional states that the child is not infectious; or
- (7) have strep throat, until 24 hours after treatment has started; or
- (8) have pertussis, until five days after appropriate antibiotic treatment; or
- (9) have hepatitis A virus infection, until one week after onset of illness or jaundice; or
- (10) have impetigo, until 24 hours after treatment; or
- (11) have a physician's or other health professional's written order that the child be separated from other children.

~~(c) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication shall be administered for non-medical reasons, such as to induce sleep.~~

- ~~(1) Prescribed medicine shall be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine shall be administered as authorized in writing by the child's parent, only to the person for whom it is prescribed.~~
- ~~(2) Over the counter medicines, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical teething medication, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be in its original container and shall be administered as authorized in writing by the child's parent, not to exceed amounts and frequency of dosage specified in the printed instructions accompanying the medicine. The parent's authorization shall give the child's name, the specific name of the over the counter medicine, dosage instructions, the parent's signature, and the date signed. Over the counter medicine may also be administered in accordance with instructions from a physician or other authorized health professional.~~
- ~~(3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.~~
- ~~(4) A written statement from a parent may give blanket permission for up to six months to authorize administration of medication for asthma and allergic reactions. A written statement from a parent may give blanket~~

Authority G.S. 110-88; 110-91(2),(12).

10A NCAC 09 .1720 SAFETY, MEDICATION AND SANITATION REQUIREMENTS

- (a) To assure the safety of children in care, the operator shall:
 - (1) empty firearms of ammunition and keep both in separate, locked storage;
 - (2) keep items used for starting fires, such as matches and lighters, out of the children's reach;
 - (3) keep all medicines in locked storage;
 - (4) keep hazardous cleaning supplies and other items that might be poisonous, e.g., toxic plants, out of reach or in locked storage when children are in care;
 - (5) keep first aid supplies in a place accessible to the operator;
 - (6) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care;
 - (7) have a working telephone within the family child care home. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone;
 - (8) have access to a means of transportation that is always available for emergency situations; and
 - (9) be able to recognize common symptoms of illnesses.
- (b) The operator may provide care for a mildly ill child who has a Fahrenheit temperature of less than 100 degrees axillary or 101 degrees orally and who remains capable of participating in routine group activities; provided the child does not:
 - (1) have the sudden onset of diarrhea characterized by an increased number of bowel movements compared to the child's normal pattern and with increased stool water; or
 - (2) have two or more episodes of vomiting within a 12 hour period; or
 - (3) have a red eye with white or yellow eye discharge until 24 hours after treatment; or
 - (4) have scabies or lice; or

~~permission for up to one year to authorize administration of sunscreen and over-the-counter diapering creams. The written statement shall describe the specific conditions under which the medication and creams are to be administered and detailed instructions on how they are to be administered. A written statement from a parent may give blanket permission to administer a one-time, weight appropriate dose of acetaminophen in cases where the child has a fever and the parent can not be reached.~~

- ~~(5) Any medication remaining after the course of treatment is completed shall be returned to the child's parents.~~
- ~~(6) Any time the operator administers medication other than sunscreen and diapering creams to any child in care, the child's name, the date, time, amount and type of medication given, and the signature of the operator shall be recorded. This information shall be noted on a form provided by the Division or on a separate form developed by the operator which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered.~~

(c) No prescription or over-the-counter medication and no topical, non-medical ointment, repellent, lotion, cream or powder shall be administered to any child:

- (1) without written authorization from the child's parent;
- (2) without written instructions from the child's parent, physician or other health professional;
- (3) in any manner not authorized by the child's parent, physician or other health professional;
- (4) after its expiration date; or
- (5) for non-medical reasons, such as to induce sleep.

(d) Prescribed medications:

- (1) shall be stored in the original containers in which they were dispensed with the pharmacy labels specifying:
 - (A) the child's name;
 - (B) the name of the medication or the prescription number;
 - (C) the amount and frequency of dosage;
 - (D) the name of the prescribing physician or other health professional; and
 - (E) the date the prescription was filled; or
- (2) if pharmaceutical samples, shall be stored in the manufacturer's original packaging, shall be labeled with the child's name, and shall be accompanied by written instructions specifying:
 - (A) the child's name;
 - (B) the names of the medication;
 - (C) the amount and frequency of dosage;

- (D) the signature of the prescribing physician or other health professional; and
- (E) the date the instructions were signed by the physician or other health professional; and

(3) shall be administered only to the child for whom they were prescribed.

(e) A parent's written authorization for the administration of a prescription medication described in Paragraph (d) of this Rule shall be valid for the length of time the medication is prescribed to be taken.

(f) Over-the-counter medications, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be stored in the manufacturer's original packaging on which the child's name is written or labeled and shall be accompanied by written instructions specifying:

- (1) the child's name;
- (2) the names of the authorized over-the-counter medication;
- (3) the amount and frequency of the dosages;
- (4) the signature of the parent, physician or other health professional; and
- (5) the date the instructions were signed by the parent, physician or other health professional.

The permission to administer over-the-counter medications is valid for up to 30 days at a time, except as allowed in Paragraphs (h), (i), and (j) of this Rule. Over-the-counter medications shall not be administered on an "as needed" basis, other than as allowed in Paragraphs (h), (i), and (j) of this Rule.

(g) When questions arise concerning whether any medication should be administered to a child, the caregiver may decline to administer the medication without signed, written dosage instructions from a licensed physician or authorized health professional.

(h) A parent may give a caregiver standing authorization for up to six months to administer prescription or over-the-counter medication to a child, when needed, for chronic medical conditions and for allergic reactions. The authorization shall be in writing and shall contain:

- (1) the child's name;
- (2) the subject medical conditions or allergic reactions;
- (3) the names of the authorized over-the-counter medications;
- (4) the criteria for the administration of the medication;
- (5) the amount and frequency of the dosages;
- (6) the manner in which the medication shall be administered;
- (7) the signature of the parent;
- (8) the date the authorization was signed by the parent; and
- (9) the length of time the authorization is valid, if less than six months.

(i) A parent may give a caregiver standing authorization for up to 12 months to apply over-the-counter, topical non-medical ointments, topical teething ointment or gel, insect repellents, lotions, creams, and powders --- such as sunscreen, diapering

PROPOSED RULES

creams, baby lotion, and baby powder --- to a child, when needed. The authorization shall be in writing and shall contain:

- (1) the child's name;
(2) the names of the authorized ointments, repellents, lotions, creams, and powders;
(3) the criteria for the administration of the ointments, repellents, lotions, creams, and powders;
(4) the manner in which the ointments, repellents, lotions, creams, and powders shall be applied;
(5) the signature of the parent;
(6) the date the authorization was signed by the parent; and
(7) the length of time the authorization is valid, if less than 12 months.

(j) A parent may give a caregiver standing authorization to administer a single weight-appropriate dose of acetaminophen to a child in the event the child has a fever and a parent cannot be reached. The authorization shall be in writing and shall contain:

- (1) the child's name;
(2) the signature of the parent;
(3) the date the authorization was signed by the parent; and
(4) the date that the authorization ends or a statement that the authorization is valid until withdrawn by the parent in writing.

(k) A parent may withdraw his or her written authorization for the administration of medications at any time in writing.

(l) Any medication remaining after the course of treatment is completed or after authorization is withdrawn shall be returned to the child's parents. Any medication the parent fails to retrieve within 72 hours of completion of treatment, or withdrawal of authorization, shall be discarded.

(m) Any time prescription or over-the-counter medication is administered by center personnel to children receiving care, including any time medication is administered in the event of an emergency medical condition without parental authorization as permitted by G.S. 110-102.1A, the child's name, the date, time, amount and type of medication given, and the name and signature of the person administering the medication shall be recorded. This information shall be noted on a medication permission slip, or on a separate form developed by the provider which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered. No documentation shall be required when items listed in Paragraph (i) of this Rule are applied to children.

(n) On the advice of the State Health Director or designee, medication may be administered in emergency situations by center personnel to children in care. The names of the children to whom the medication was administered shall be listed, along with the amount and type of medication that was administered, the date and the time the medication was administered, and the signature of the person administering the medication. This information shall be available for review by a representative of the Division for at least six months after the medication is administered.

(o) To assure the health of children through proper sanitation, the operator shall:

- (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home;
(2) have sanitary toilet, diaper changing and handwashing facilities. Diaper changing areas shall be separate from food preparation areas;
(3) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
(A) wash his or her hands before, as well as after, diapering each child;
(B) ensure the child's hands are washed after diapering the child; and
(C) place soiled diapers in a covered, leak proof container which is emptied and cleaned daily.
(4) use sanitary procedures when preparing and serving food. The operator shall:
(A) wash his or her hands before and after handling food and feeding the children; and
(B) ensure the child's hands are washed before and after the child is fed.
(5) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids.
(6) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;
(7) date and label all bottles for each individual child, except when there is only one bottle fed child in care;
(8) have a house that is free of rodents;
(9) screen all windows and doors used for ventilation;
(10) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs; and
(11) store garbage in waterproof containers with tight fitting covers.

(p) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each individual child during toilet training.

(q) Smoking shall not be permitted indoors while children are in care.

Authority G.S. 110-88; 110-91(6).

10A NCAC 09 .1724 SAFE SLEEP POLICY

(a) Each operator licensed to care for infants aged 12 months or younger shall develop and adopt a written safe sleep policy that:

PROPOSED RULES

- (1) specifies that the operator shall place infants aged 12 months or younger on their backs for sleeping, unless:
 - (A) for an infant aged 6 months or less, the operator receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8); or
 - (B) for a child older than 6 months, the operator receives a written waiver of this requirement from a health care provider, as defined in G.S. 58-50-61(a)(8), or a parent, or a legal guardian;
- (2) specifies that infants aged 12 months or younger shall be placed in a crib, bassinet or play pen with a firm padded surface when sleeping;
- (3) specifies whether pillows, blankets, toys, and other objects may be placed in a crib with a sleeping infant aged 12 months or younger, and if so, specifies the number and types of allowable objects;
- (4) specifies that nothing shall be placed over the head or face of an infant aged 12 months or younger when the infant is laid down to sleep;
- (5) specifies the temperature in the room where infants aged 12 months or younger are sleeping does not exceed 75°F;
- (6) specifies the means by which the operator shall visually check sleeping infants aged 12 months or younger;
- (7) specifies the frequency with which the operator shall visually check sleeping infants aged 12 months or younger;
- (8) specifies how the operator shall document compliance with visually checking on sleeping infants aged 12 months or younger, with such documents to be maintained for a minimum of one month; and
- (9) specifies any other steps the operator shall take to provide a safe sleep environment for infants aged 12 months or younger.

(b) The operator shall post a copy of the safe sleep policy or a poster about safe sleep practices in a prominent place in the infant sleeping room or area.

(c) A copy of the operator's safe sleep policy shall be given and explained to the parents of an infant aged 12 months or younger on or before the first day the infant attends the home. The parent shall sign a statement acknowledging the receipt and explanation of the policy. The acknowledgement shall contain:

- (1) the infant's name;
- (2) the date the infant first attended the home;
- (3) the date the operator's safe sleep policy was given and explained to the parent; and
- (4) the date the parent signed the acknowledgement.

The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(d) If an operator amends a home's safe sleep policy, the operator shall give written notice of the amendment to the

parents of all enrolled infants aged 12 months or younger at least 14 days before the amended policy is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's record as long as the child is enrolled at the home.

(e) A physician's or parent's waiver of the requirement that all infants aged 12 months or younger be placed on their backs for sleeping shall:

- (1) bear the infant's name and birth date;
- (2) be signed and dated by the infant's physician or parent; and
- (3) specify the infant's authorized sleep positions.

The operator shall retain the waiver in the infant's record as long as the child is enrolled at the home. A written copy of the waiver shall be posted for quick reference near the infant's crib, bassinet or play pen, or posted in a prominent place in the room where the infant sleeps, and shall specify the infant's authorized sleep positions.

(f) The policy shall be developed and shared with parents of infants currently enrolled within 30 days of this Rule becoming effective.

Authority G.S. 110-91(15); 143B-168.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to adopt the rules cited as 10A NCAC 13F .0504-.0508, .0512, .0703; 13G .0504-.0508; amend the rules cited as 10A NCAC 13F .0201-.0204, .0206-.0209, .0211-.0213, .0215, .0301-.0302, .0304, .0401-.0402, .0404, .0406-.0407, .0501-.0503, .0601, .0701-.0702, .0801-.0802, .0902-.0906, .0908, .1202-.1203, .1206; 13G .0204-.0205, .0207,.0211, .0302, .0405-.0406, .0702, .0705, .0801-.0802, .0902-.0904 and repeal the rules cited as 10A NCAC 13F .0205, .0210, .1204; 13G .1205.

Proposed Effective Date: *April 1, 2004*

Public Hearing:

Date: *February 5, 2004*

Time: *10:00 a.m.*

Location: *Dorothea Dix Campus, Council Building, Room 201, 701 Barbour Dr., Raleigh, NC*

Reason for Proposed Action: *The NC Medical Care Commission had adopted these Rules under temporary action and has given staff permission to proceed with permanent rule-making. The "Notice of Text" is the first step in the permanent rule-making process. The text of temporary rules was published in Volume 18, Issues 01 & 03 of the NC Register. These Rules pertain to the licensure and regulation of adult care homes, family care homes and assisted living facilities. The changes include, but are not limited to, eliminating the cross-references between 10A NCAC 13F and 10A NCAC 13G and various technical changes. The authority for this rule-making action is S.L. 2002-126 and S.L. 2003-284.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to these Rules may be submitted to*

Mark Benton, NCDPS, 2701 Mail Service Center, Raleigh, NC 27699-2701 or email mark.benton@ncmail.net.

Written comments may be submitted to: Mark Benton, NCDPS, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3750, fax (919) 733-2757, and email mark.benton@ncmail.net.

Comment period ends: February 13, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13F – LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .0200 – LICENSING

10A NCAC 13F .0201 DEFINITIONS

Rule 10 NCAC 42C .3901 shall control for this Subchapter. The following definitions shall apply throughout this Section:

- (1) "Person" means an individual; a trust or estate; a partnership; a corporation; or any grouping of individuals, each of whom owns five percent or more of a partnership or corporation, who collectively own a majority interest of either a partnership or a corporation.
(2) "Owner" means any person who has or had legal or equitable title to or a majority interest in an adult care home.
(3) "Affiliate" means any person that directly or indirectly controls or did control an adult care home or any person who is controlled by a person who controls or did control an adult care home. In addition, two or more adult care homes who are under common control are affiliates.
(4) "Principal" means any person who is or was the owner or operator of an adult care home,

an executive officer of a corporation that does or did own or operate an adult care home, a general partner of a partnership that does or did own or operate an adult care home, or a sole proprietorship that does or did own or operate an adult care home.

(5) "Indirect control" means any situation where one person is in a position to act through another person over whom the first person has control due to the legal or economic relationship between the two.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0113; 1999-0334; 2002-0160.

10A NCAC 13F .0202 THE LICENSE

The Rules stated in 10 NCAC 42C .3401 shall control for this Subchapter.

(a) Except as otherwise provided in Rule .0203 of this Section, the Department shall issue an adult care home license to any person who submits the application material according to Rule .0204 of this Section and the Department determines that the applicant complies with the provisions of all applicable State adult care home licensure statutes and rules. All applications for a new license shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.

(b) The license shall be conspicuously posted in a public place in the home.

(c) The license shall be in effect for 12 months from the date of issuance unless revoked for cause, voluntarily or involuntarily terminated, or changed to provisional status.

(d) A provisional license may be issued in accordance with G.S. 131D-2(b).

(e) When a provisional license is issued, the administrator shall post the provisional license and a copy of the notice from the Division of Facility Services identifying the reasons for it, in place of the full license.

(f) The license is not transferable or assignable.

(g) The license shall be terminated when the home is licensed to provide a higher level of care or a combination of a higher level of care and adult care home level of care.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0203 PERSONS NOT ELIGIBLE FOR NEW ADULT CARE HOME LICENSES

Rule 10 NCAC 42C .3902 shall control for this Subchapter.

(a) A new license shall not be issued for an adult care home if any of the conditions specified in G.S. 131D-2(b)(1b) apply to the applicant for the adult care home license.

(b) Additionally, no new license shall be issued for any adult care home to an applicant for licensure who is the owner, principal or affiliate of an adult care home that has had its admissions suspended until six months after the suspension is lifted.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0204 APPLYING FOR A LICENSE

~~(2) The requirements in 10 NCAC 42C .3301 shall control for this Subchapter, except that:~~

- ~~(1) Three sets of schematic floor plans or blueprints of the building are to be sent to the Division of Facility Services;~~
- ~~(2) Form DSS 1514 (Fire and Building Safety Inspection Report) must be used; and~~
- ~~(3) Form DHS 1213 (Sanitation Report) must be used with facilities licensed for 13 or more residents.~~

(a) Prior to submission of a license application, all Certificate of Need requirements shall be met according to G.S. 131E, Article 9.

(b) In applying for a license to operate an adult care home, the applicant shall submit the following to the Division of Facility Services:

- (1) the Initial License Application which is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm> or the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.
- (2) plans and specifications as required in Section .0300 of this Subchapter and a construction review fee according to G.S. 131E-267;
- (3) an approved fire and building safety inspection report from the local fire marshal to be submitted upon completion of construction or renovation;
- (4) an approved sanitation report or a copy of the permit to begin operation from the sanitation division of the county health department to be submitted upon completion of construction or renovation;
- (5) a nonrefundable license fee as required by G.S. 131D-2(b)(1); and
- (6) a certificate of occupancy or certification of compliance from the local building official to be submitted upon completion of construction or renovation.

(c) A pre-licensing survey shall be made by program consultants of the Division of Facility Services and an adult home specialist of the county department of social services except in the case of a change of licensee according to Rule .0207(4) of this Subchapter.

(d) The Division of Facility Services shall provide written notification of the action taken to the applicant.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160; 2003-0284.

10A NCAC 13F .0205 APPLICATION TO LICENSE A NEWLY CONSTRUCTED OR RENOVATED BUILDING

~~(a) The requirements in 10A NCAC 13G .0205 shall control for this Subchapter, except that:~~

- ~~(1) Three sets of schematic floor plans or blueprints are to be sent to the Division of Facility Services; and~~
- ~~(2) A pre-licensing visit and subsequent recommendation will be made by a program~~

~~consultant and a construction consultant of the Division of Facility Services in all cases involving a home for the aged and disabled.~~

~~(b) In addition to the requirements in Rule .0205 of this Subchapter, all new construction, additions and renovations to existing buildings must meet the full requirements of the North Carolina Building Code for institutions and the sanitation requirements of the Division of Environmental Health as well as the rules of this Subchapter.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-160; 2003-0284.

10A NCAC 13F .0206 CAPACITY

~~The requirements in 10 NCAC 42C .3202 shall control for this Subchapter except that the licensed capacity of homes for the aged and disabled is seven or more residents.~~

- (a) The licensed capacity of adult care homes is seven or more residents.
- (b) The total number of residents shall not exceed the number shown on the license.
- (c) A facility shall be licensed for no more beds than the number for which the required physical space and other required facilities in the building are available.
- (d) The bed capacity and services shall be in compliance with G.S. 13E, Article 9, regarding the certificate of need.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160; 2003-0284.

10A NCAC 13F .0207 CHANGE OF LICENSEE

~~The requirements in 10 NCAC 42C .3304(1) through (5) shall control for this Subchapter.~~

When a licensee plans to sell the adult care home business, the following procedure is required.

- (1) The licensee shall provide written notification of a planned change of licensee to the Division of Facility Services, the county department of social services and the residents or their responsible persons prior to the planned change of licensee.
- (2) If the prospective owner of the adult care home business plans to purchase the building, the prospective owner shall provide the Certificate of Need Section of the Division of Facility Services with prior written notice as required by G.S. 13E-184(a)(8) prior to the purchase of the building. If the licensee is changing but the ownership of the building is not, the applicant for the license shall request in writing an exemption from review from the Certificate of Need Section.
- (3) The prospective owner shall submit the following license application material to the Division of Facility Services:

(a) the Initial License Application which is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or from the Division of Facility Services, Adult Care Licensure

- Section, 2708 Mail Service Center, Raleigh, NC 27699-2708;
- (b) an approved fire and building safety inspection report from the local fire marshal to be submitted upon completion of construction or renovation;
 - (c) an approved sanitation report or a copy of the permit to begin operation from the sanitation division of the county health department to be submitted upon completion of construction or renovation; and
 - (d) a nonrefundable license fee as required by G.S. 131D-2(b)(1).

- (4) Following the licensing of the facility to the new licensee, a survey of the facility shall be made by program consultants of the Division of Facility Services and an adult home specialist of the county department of social services.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-160; 2003-0284.

10A NCAC 13F .0208 RENEWAL OF LICENSE

Rule 10 NCAC 42C .3402 shall control for this Subchapter.

- (a) The license shall be renewed annually, except as otherwise provided in Rule .0209 of this Subchapter, if the licensee submits an application for renewal on the forms provided by the Department with a nonrefundable annual license fee according to G.S. 131D-2(b)(1) and the Department determines that the licensee complies with the provisions of all applicable State adult care home licensure statutes and rules. When violations of licensure rules or statutes are documented and have not been corrected prior to expiration of license, the Department may approve a continuation or extension of a plan of correction, or may issue a provisional license or revoke the license for cause.
- (b) All applications for license renewal shall disclose the names of individuals who are co-owners, partners or shareholders holding an ownership or controlling interest of five percent or more of the applicant entity.

Authority G.S. 131D-2; 131D-4.5; 143B-153; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0209 CONDITIONS FOR LICENSE RENEWAL

Rule 10 NCAC 42C .2903 shall control for this Subchapter.

- (a) Before renewing an existing license of an adult care home, the Department shall conduct a compliance history review of the facility and its principals and affiliates.
- (b) In determining whether to renew a license under G.S. 131D-2(b)(6), the Department shall take into consideration at least the following:
 - (1) the compliance history of the applicant facility;
 - (2) the compliance history of the owners, principals or affiliates in operating other adult care homes in the state;

- (3) the extent to which the conduct of a related facility is likely to affect the quality of care at the applicant facility; and
 - (4) the hardship on residents of the applicant facility if the license is not renewed.
- (c) Pursuant to G.S. 131D-2(b)(1), an adult care home is not eligible to have its license renewed if any outstanding fines or penalties imposed by the Department have not been paid; provided, however that if an appeal is pending the fine or penalty will not be considered imposed until the appeal is resolved.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0210 TERMINATION OF LICENSE

- (a) The Division of Facility Services shall take action to terminate the license when one of the following situations exist:
 - (1) change of ownership of the adult care home business; or
 - (2) change of location of home.
- (b) The license is not transferable or assignable.
- (c) The unexpired license shall be returned to the state Division of Facility Services by the county department of social services with the following information:
 - (1) reason for closing;
 - (2) date of closing; and
 - (3) plans made for residents.
- (d) When the licensee voluntarily closes the home, a signed statement to this effect shall be submitted to the county department of social services who shall immediately forward the statement to the Division of Facility Services. The licensee or his designee shall give at least 30 days prior notice of the closing to the county department of social services and the residents or their responsible persons.
- (e) The license of an adult care home shall be terminated when the home is licensed to provide a higher level of care or a combination of a higher level of care and adult care home level of care.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-160; 2003-0284.

10A NCAC 13F .0211 NOTIFICATION ABOUT CLOSING OF HOME

- The rules stated in 10A NCAC 13G .0211 and .1202 shall control for this Subchapter.
- If a licensee plans to close a home, the licensee shall provide written notification of the planned closing to the Division of Facility Services, the county department of social services and the residents or their responsible persons at least 30 days prior to the planned closing. Written notification shall include reason for closing, date of closing and plans made for the move of the residents.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0212 DENIAL OR REVOCATION OF LICENSE

The rules stated in 10 NCAC 42C .3404 shall control for this Subchapter.

- (a) A license may be denied by the Division of Facility Services for failure to comply with the rules of this Subchapter.
- (b) Denial by the Division of Facility Services shall be effected by mailing to the applicant, by registered mail, a notice setting forth the particular reasons for such action.
- (c) A license may be revoked by the Division of Facility Services in accordance with G.S. 131D-2(b) and G.S. 131D-29.
- (d) When a facility receives a notice of revocation, the administrator shall inform each resident and the resident's responsible person of the notice and the basis on which it was issued.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0213 APPEAL OF LICENSURE ACTION

The rules stated in 10 NCAC 42C .3405 shall control for this Subchapter.

- (a) In accordance with G.S. 150B-2(2), any person may request a determination of his legal rights, privileges, or duties as they relate to laws or rules administered by the Department of Health & Human Services. All requests shall be in writing and contain a statement of facts prompting the request sufficient to allow for appropriate processing by the Department of Health & Human Services.
- (b) Any person seeking such a determination shall comply with G.S. 150B-22 concerning informal remedies.
- (c) All petitions for hearings regarding matters under the control of the Department of Health & Human Services shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 03 .0103. In accordance with G.S. 1A-1, Rule 4(j)4, the petition shall be served on a registered agent for service of process for the Department of Health & Human Services. A list of registered agents may be obtained from the Office of Legal Affairs, 2005 Mail Service Center, Raleigh, NC 27699-2005.
- (d) An administrator of a facility which has its license revoked may not apply to operate another facility except according to the terms set forth by the Director of the Division of Facility Services in the final closure notice.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0215 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

Rule 10 NCAC 42C .3601 shall control for this Subchapter.

- (a) The county department of social services or the Division of Facility Services shall identify areas of non-compliance resulting from a complaint investigation or monitoring or survey visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. If the county department of social services or the Division of Facility Services decides that the violation is a Type B violation as defined in G.S. 131D-34(a)(2), it shall require a plan of correction pursuant to G.S. 131D-34(a)(2). If the county department of social services or the Division of Facility Services decides that the violation is a Type A violation as defined in G.S. 131D-34(a)(1), it shall follow the procedure required in G.S. 131D-34(a)(1)(a-c) and prepare an administrative penalty proposal for submission to the Department. The proposal shall include a copy of the written confirmation required in G.S. 131D-34(a)(1)(c) and

documentation that the licensee was notified of the county department of social services' or the Division of Facility Services' intent to prepare and forward an administrative penalty proposal to the Department; offered an opportunity to provide additional information prior to the preparation of the proposal; after the proposal is prepared, given a copy of the contents of the proposal; and then extended an opportunity to request a conference with the agency proposing the administrative penalty, allowing the licensee 10 days to respond prior to forwarding the proposal to the Department. The conference, if requested of the county department of social services, shall include the county department director or his designee. The licensee may request a conference and produce information to cause the agency recommending the administrative penalty to change its proposal. The agency recommending the administrative penalty may rescind its proposal; or change its proposal and submit it to the Department or submit it unchanged to the Department pursuant to G.S. 131D-34(c2).

- (b) An assistant chief of the Adult Care Licensure Section shall receive the proposal, review it for completeness and evaluate it to determine the penalty amount.

- (1) If the proposal is complete, the assistant chief shall make a decision on the amount of penalty to be submitted for consideration and whether to recommend training in lieu of an administrative penalty pursuant to G.S. 131D-34(g1).
- (2) If the proposal is incomplete, the assistant chief shall contact the agency that submitted the proposal to request necessary changes or additional material.
- (3) When the proposal is complete and the amount of penalty determined, the assistant chief shall forward the proposal to the administrative penalty monitor for processing. If the assistant chief recommends training in lieu of an administrative penalty pursuant to G.S. 131D-34(g1), the recommendation shall be forwarded with the proposal.

(c) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the administrative penalty monitor that an administrative penalty is being considered.

(d) The licensee shall have 10 working days from receipt of the notification to provide both the Department and the county department of social services any additional information relating to the proposed administrative penalty.

(e) If a facility fails to correct a Type A or a Type B violation within the time specified on the plan of correction, an assistant chief of the Adult Care Licensure Section shall make a decision on the amount of penalty pursuant to G.S. 131D-34(b)(1) and (2) and submit a penalty proposal for consideration by the Penalty Review Committee.

(f) The Penalty Review Committee shall consider Type A violations and Type A and Type B violations that have not been corrected within the time frame specified on the plan of correction. Providers, complainants, affected parties and any member of the public may attend Penalty Review Committee meetings. Upon written request of any affected party for reasons of illness or schedule conflict, the department may grant a delay until the following month for Penalty Review Committee

review. The Penalty Review Committee chair may ask questions of any of these persons, as resources, during the meeting. Time shall be allowed during the meeting for individual presentations which provide pertinent additional information. The order in which presenters speak and the length of each presentation shall be at the discretion of the Penalty Review Committee chair.

(g) The Penalty Review Committee shall have for review the entire record relating to the penalty recommendation shall make recommendations after review of administrative penalty proposals, any supporting evidence, any additional information submitted by the licensee as described in Paragraph (d) and the factors specified in G.S. 131D-34(c).

(h) There shall be no taking of sworn testimony or cross-examination of anyone during the course of the Penalty Review Committee meetings.

(i) If the Penalty Review Committee determines that the licensee has violated applicable rules or statutes, the Penalty Review Committee shall recommend an administrative penalty for each violation pursuant to G.S. 131D-34. Recommendations for adult care home penalties shall be submitted to the Chief of the Adult Care Licensure Section who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation or require staff training pursuant to G.S. 131D-34(g1) and notify the licensee by certified mail.

(j) The licensee shall have 60 days from receipt of the notification to pay the penalty or shall file a petition for a contested case with the Office of Administrative Hearings within 30 days of the mailing of the notice of penalty imposition as provided by G.S. 131D-34.

Authority G.S. 131D-2; 131D-34; 143B-153; 143B-165; S.L. 2002-0160.

SECTION .0300 - PHYSICAL PLANT

10A NCAC 13F .0301 LOCATION

In addition to the requirements in 10 NCAC 42C .2101, the following shall apply:

- (1) A home for the aged and disabled may be located in an existing building or in a building newly constructed specifically for that purpose; and
- (2) The building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.

(a) The home shall be in a location approved by local zoning boards and be a safe distance from streets, highways, railroads, open lakes and other hazards. It shall be located on a street, road or highway accessible by car.

(b) Plans for the building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.

(c) An adult care home may be located in an existing building or in a building newly constructed specifically for that purpose.

(d) The building and site are to be reviewed and approved by the Construction Section of the Division of Facility Services.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0302 CONSTRUCTION

(a) Any building licensed for the first time ~~must~~shall meet the requirements of the North Carolina State Building Code for new construction as well as all of the rules of this Section. No horizontal exits shall be permitted in newly constructed facilities or new additions to existing facilities.

(b) In a facility licensed before April 1, 1984, the building ~~must~~shall meet and be maintained to meet all the requirements for new construction required by the North Carolina State Building Code in effect at the time the building was constructed. Where code requirements require a modification of the building's structural system, an alternative method may be used to meet the intent of the code.

(c) In a facility licensed before April 1, 1984 and constructed prior to January 1, 1975, the building, in addition to meeting the requirements of the North Carolina State Building Code in effect at the time the building was constructed, shall be provided with the following:

- (1) A fire alarm system with pull stations near each exit and sounding devices which are audible throughout the building must be provided.
- (2) Products of combustion (smoke) U/L listed detectors in all corridors. The detectors must be no more than 60 feet from each other and no more than 30 feet from any end wall.
- (3) Heat detectors or products of combustion detectors in all storage rooms, kitchens, living rooms, dining rooms and laundries.
- (4) All detection systems interconnected with the fire alarm system.
- (5) Emergency power for the fire alarm system, heat detection system, and products of combustion detection system. The emergency power for these systems may be a manual start system capable of monitoring the building for 24 hours and sound the alarm for five minutes at the end of that time. The emergency power for the emergency lights shall be a manual start generator or a U/L approved trickle charge battery system capable of providing light for 1-1/2 hours when normal power fails.

(d) The building ~~must~~shall meet ~~sanitary~~sanitation requirements as determined by the North Carolina Division of ~~Health Services~~Environmental Health.

(e) Effective July 1, 1987, resident bedrooms and resident services shall not be permitted on the second floor of any facility licensed prior to April 1, 1984 and classified as two-story wood frame construction by the North Carolina State Building Code.

(f) The facility shall have current sanitation and fire and building safety inspection reports which shall be maintained in the facility and available for review.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0304 HOUSEKEEPING AND FURNISHINGS

~~(a) The requirements in 10A NCAC 13G .0314 shall control for this Subchapter, except that a home for the aged and disabled must have an approved sanitary classification at all times in a home with twelve beds or less and must have a sanitary grade of~~

PROPOSED RULES

~~ninety or above at all times in a home with thirteen beds or more.~~

~~(b) In addition to the requirements in 10A NCAC 13G .0314, the dining room in homes for the aged and disabled must have small tables serving from two to eight persons.~~

~~(a) Facilities shall:~~

- ~~(1) have walls, ceilings, and floors or floor coverings kept clean and in good repair;~~
- ~~(2) have no chronic unpleasant odors;~~
- ~~(3) have furniture clean and in good repair;~~
- ~~(4) have an approved sanitation classification at all times in facilities with 12 beds or less and sanitation scores of 85 or above at all times in facilities with 13 beds or more;~~
- ~~(5) be maintained in an uncluttered, clean and orderly manner, free of all obstructions and hazards;~~
- ~~(6) have an adequate supply of bath soap, clean towels, washcloths, sheets, pillow cases, blankets, and additional coverings on hand at all times;~~
- ~~(7) make available the following items as needed through any means other than charge to the personal funds of recipients of State-County Special Assistance:

 - ~~(A) protective sheets and clean, absorbent, soft and smooth pads;~~
 - ~~(B) bedpans, urinals, hot water bottles, and ice caps; and~~
 - ~~(C) bedside commodes, walkers, and wheelchairs;~~~~
- ~~(8) have television and radio, each in good working order; and~~
- ~~(9) have curtains, draperies or blinds, where appropriate.~~

~~(b) Residents will be allowed to bring their own furniture and personal belongings if permitted by the home.~~

~~(c) Each bedroom shall have the following furnishings in good repair and clean for each resident:~~

- ~~(1) Single bed equipped with box springs and mattress or solid link springs and no-sag innerspring or foam mattress. Hospital bed appropriately equipped shall be arranged for as needed. A double bed is allowed if used only for single occupancy, unless occupied by husband and wife. A water bed is allowed if requested by a resident and permitted by the home. Each bed is to have the following:

 - ~~(A) at least one pillow with clean pillow case;~~
 - ~~(B) clean top and bottom sheets on the bed, with bed changed as often as necessary but at least once a week; and~~
 - ~~(C) clean bedspread and other clean coverings as needed;~~~~
- ~~(2) a bedside type table;~~
- ~~(3) chest of drawers or bureau when not provided as built-ins, or a double chest of drawers or double dresser for two residents;~~

- ~~(4) a wall or dresser mirror that can be used by each resident;~~
- ~~(5) a minimum of one comfortable chair (rocker or straight, arm or without arms, as preferred by resident), high enough from floor for easy rising;~~
- ~~(6) additional chairs available, as needed, for use by visitors;~~
- ~~(7) individual clean towel and wash cloth, and towel bar; and~~
- ~~(8) a light overhead of bed with a switch within reach of person lying on bed; or a lamp. The light shall be of 30 foot-candle power for reading.~~

~~(d) The living room shall have the following furnishings:~~

- ~~(1) functional living room furnishings for the comfort of aged and disabled persons, with coverings easily cleanable;~~
- ~~(2) recreational equipment, supplies for games, books, and reasonably current magazines;~~
- ~~(3) an easily readable clock; and~~
- ~~(4) a newspaper.~~

~~(e) The dining room shall have the following furnishings:~~

- ~~(1) small tables serving from two to eight persons and chairs to seat all residents eating in the dining room; tables and chairs equal to the resident capacity of the home shall be on the premises; and~~
- ~~(2) movable, non-folding chairs designed to minimize tilting.~~

Authority G.S. 131D-2; 143B-153.

SECTION .0400 - STAFF QUALIFICATIONS

10A NCAC 13F .0401 CERTIFICATION OF ADMINISTRATOR

~~The administrator of an adult care home licensed on or after January 1, 2000, shall be certified by the Department under the provisions of G.S. 90, Article 20A, Article 20A and according to Rules .2401 - .2403 of this Subchapter.~~

Authority G.S. 90-288; 131D-2; 143B-165; S.L. 1999-0334; 1999-0443; 2002-0160.

10A NCAC 13F .0402 QUALIFICATIONS OF ADMINISTRATOR-IN-CHARGE

~~The supervisor in charge is responsible to the administrator for carrying out the program in the home in the absence of the administrator. All of the following requirements shall be met:~~

- ~~(1) The applicant shall complete the Application for Supervisor in Charge (DSS 1862);~~
- ~~(2) The qualifications of the administrator and co-administrator referenced in Paragraphs (2), (5), (6), and (7) of Rule 10A NCAC 13G .0401 shall apply to the supervisor in charge. The supervisor in charge (employed on or after August 1, 1991) shall meet a minimum educational requirement by being at least a high school graduate or certified under the GED Program or by passing an alternative~~

~~examination established by the Department of Health and Human Services. Documentation that these qualifications have been met shall be on file in the home prior to employing the supervisor in charge;~~

~~(3) The supervisor in charge shall be willing to work with bonafide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements;~~

~~(4) The supervisor in charge shall verify that he earns 12 hours a year of continuing education credits related to the management of adult care homes and care of aged and disabled persons in accordance with procedures established by the Department of Health and Human Services; and~~

~~(5) When there is a break in employment as a supervisor in charge of one year or less, the educational qualification under which the person was last employed will apply.~~

The administrator-in-charge, who is responsible to the administrator for carrying out the program in the home in the absence of the administrator, shall meet the following requirements:

- (1) be 21 years or older;
- (2) be at least a high school graduate or certified under the G.E.D. program or have passed an alternative examination established by the Department;
- (3) have at least six months training or experience related to management or supervision in long term care or health care settings or be a licensed health professional, licensed nursing home administrator or certified assisted living administrator; and
- (4) earn at least 12 hours a year of continuing education credits related to the management of adult care homes or care of aged and disabled persons.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 2002-0160; 2003-0284.

10A NCAC 13F .0404 QUALIFICATIONS OF ACTIVITIES COORDINATOR

~~(a) Since activities are a required part of the program of the home for the aged and disabled, there must be a designated activities coordinator.~~

~~(b) Rules contained in 10 NCAC 42C .2006(1) through (3) shall control for this Subchapter.~~

There shall be a designated activities coordinator who shall:

- (1) be 18 years of age or older;
- (2) be at least a high school graduate or certified under the GED Program or pass an alternative examination established by the Department of Health & Human Services;
- (3) complete within 18 months of employment or assignment to this position a program for adult care home activity coordinators or directors offered through the community colleges, have

a degree in recreational administration or a related field or have completed the required program before the effective date of this Rule; and

- (4) be willing to work with bona fide inspectors and the monitoring and licensing agencies toward meeting and maintaining the rules of this Subchapter and other legal requirements.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0406 TEST FOR TUBERCULOSIS

~~The rules stated in 10 NCAC 42C .2004 shall control for this Subchapter.~~

(a) Upon employment or living in the facility, the administrator and all other staff and any live-in non-residents shall be tested for tuberculosis disease in compliance with control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services Tuberculosis Control Program, 1902 Mail Service Center, Raleigh NC 27699-1902.

(b) There shall be documentation on file in the home that the administrator, all other staff and any live-in non-residents are free of tuberculosis disease that poses a direct threat to the health or safety of others.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0407 OTHER STAFF QUALIFICATIONS

~~The rules stated in 10 NCAC 42C .2005 shall control for this Subchapter.~~

(a) Each staff person shall:

- (1) have a well-defined job description that reflects actual duties and responsibilities and is signed by the administrator and the employee;
- (2) be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents;
- (3) be informed of the confidential nature of resident information and shall protect and preserve such information from unauthorized use and disclosure.
Note: G.S. 131D-2(b)(4), 131D-21(6), and 131D-21.1 govern the disclosure of such information;
- (4) not hinder or interfere with the exercise of the rights guaranteed under the Declaration of Residents' Rights in G.S. 131D-21;
- (5) be 18 years or older;
- (6) have no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;
- (7) have documented annual immunization against influenza virus according to G.S. 131D-9, except as documented otherwise according to exceptions in this law;

- (8) have a criminal background check in accordance with G.S. 114-19.10 and 131D-40; and
- (9) maintain a valid driver's license if responsible for transportation of residents.

(b) If licensed practical nurses are employed by the facility and practicing in their licensed capacity as governed by their practice act and occupational licensing laws, there shall be continuous availability of a registered nurse consistent with 21 NCAC 36 .0224(I) and 21 NCAC 36 .0225.

Note: The practice of licensed practical nurses is governed by their occupational licensing laws.

Authority G.S. 131D-2; 131D-4.5; 143B-153; 143B-165; S.L. 1999-334; 2002-160.

SECTION .0500 - STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION

10A NCAC 13F .0501 PERSONAL CARE TRAINING AND COMPETENCY

~~(a) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraph (h) of this Rule successfully complete a 45-hour training program, including competency evaluation, approved by the Department according to Rule .1411 of this Section. Directly supervise means being on duty in the facility to oversee or direct the performance of staff duties.~~

~~(b) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraph (i) of this Rule successfully complete a 80-hour training program, including competency evaluation, approved by the Department according to Rule .1411 of this Section and comparable to the State approved Nurse Aide I training.~~

~~(c) The facility shall assure that training specified in Paragraphs (a) and (b) of this Rule is successfully completed within six months after hiring for staff hired after July 1, 2000. Staff hired prior to July 1, 2000, shall have completed at least a 40-hour training program for the performance or supervision of tasks listed in Paragraph (i) of this Rules or a 75-hour training program for the performance or supervision of tasks listed in Paragraph (j) of this Rule. The 40 and 75-hour training shall meet all the requirements of this Rule except for the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule.~~

~~(d) The Department shall have the authority to extend the six-month time frame specified in Paragraph (c) of this Rule up to six additional months for a maximum allowance of 12 months for completion of training upon submittal of documentation to the Department by the facility showing good cause for not meeting the six-month time frame.~~

~~(e) Exemptions from the training requirements of this Rule are as follows:~~

- ~~(1) The Department shall exempt staff from the 45-hour training requirement upon successful completion of a competency evaluation approved by the Department according to Rule .1411 of this Section if staff have been employed to perform or directly supervise personal care tasks listed in Paragraph (h) and the interpersonal skills and behavioral~~

~~interventions listed in Paragraph (j) of this Rule in a comparable long-term care setting for a total of at least 12 months during the three years prior to January 1, 1996, or the date they are hired, whichever is later.~~

- ~~(2) The Department shall exempt staff from the 80-hour training requirement upon successful completion of a 15-hour refresher training and competency evaluation program or a competency evaluation program approved by the Department according to Rule .1411 of this Section if staff have been employed to perform or directly supervise personal care tasks listed in Paragraph (i) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule in a comparable long-term care setting for a total of at least 12 months during the three years prior to January 1, 1996, or the date they are hired, whichever is later.~~

- ~~(3) The Department shall exempt staff from the 45 and 80-hour training and competency evaluation who are licensed health professionals or listed on the N.C. Nurse Aide Registry.~~

~~(f) The facility shall maintain documentation of the training and competency evaluations of staff required by the rules of this Subchapter. The documentation shall be filed in an orderly manner and made available for review by representatives of the Department.~~

~~(g) The facility shall assure that staff who perform or directly supervise staff who perform personal care tasks listed in Paragraphs (h) and (i) and the interpersonal skills and behavioral interventions listed in Paragraph (j) of this Rule receive on-the-job training and supervision as necessary for the performance of individual job assignments prior to meeting the training and competency requirements of this Rule.~~

~~(h) For the purposes of this Rule, personal care tasks which require a 45-hour training program include, but are not limited to the following:~~

- ~~(1) assist residents with toileting and maintaining bowel and bladder continence;~~
- ~~(2) assist residents with mobility and transferring;~~
- ~~(3) provide care for normal, unbroken skin;~~
- ~~(4) assist with personal hygiene to include mouth care, hair and scalp grooming, care of fingernails, and bathing in shower, tub, bed-basin;~~
- ~~(5) trim hair;~~
- ~~(6) shave resident;~~
- ~~(7) provide basic first aid;~~
- ~~(8) assist residents with dressing;~~
- ~~(9) assist with feeding residents with special conditions but no swallowing difficulties;~~
- ~~(10) assist and encourage physical activity;~~
- ~~(11) take and record temperature, pulse, respiration, routine height and weight;~~
- ~~(12) trim toenails for residents without diabetes or peripheral vascular disease;~~
- ~~(13) perineal care;~~
- ~~(14) apply condom catheters;~~

- (15) — turn and position;
- (16) — collect urine or fecal specimens;
- (17) — take and record blood pressure if a registered nurse has determined and documented staff to be competent to perform this task;
- (18) — apply and remove or assist with applying and removing prosthetic devices for stable residents if a registered nurse, licensed physical therapist or licensed occupational therapist has determined and documented staff to be competent to perform the task; and
- (19) — apply or assist with applying ace bandages, TED's and binders for stable residents if a registered nurse has determined and documented staff to be competent to perform the task.

(i) For the purposes of this Rule, personal care tasks which require a 80-hour training program are as follows:

- (1) — assist with feeding residents with swallowing difficulty;
- (2) — assist with gait training using assistive devices;
- (3) — assist with or perform range of motion exercises;
- (4) — empty and record drainage of catheter bag;
- (5) — administer enemas;
- (6) — bowel and bladder retraining to regain continence;
- (7) — test urine or fecal specimens;
- (8) — use of physical or mechanical devices attached to or adjacent to the resident which restrict movement or access to one's own body used to restrict movement or enable or enhance functional abilities;
- (9) — non-sterile dressing procedures;
- (10) — force and restrict fluids;
- (11) — apply prescribed heat therapy;
- (12) — care for non-infected pressure ulcers; and
- (13) — vaginal douches.

(j) For purposes of this Rule, the interpersonal skills and behavioral interventions include, but are not limited to the following:

- (1) — recognition of residents' usual patterns of responding to other people;
- (2) — individualization of appropriate interpersonal interactions with residents;
- (3) — interpersonal distress and behavior problems;
- (4) — knowledge of and use of techniques, as alternatives to the use of restraints, to decrease residents' intrapersonal and interpersonal distress and behavior problems;
- (5) — knowledge of procedures for obtaining consultation and assistance regarding safe, humane management of residents' behavioral problems.

(a) The facility shall assure that staff who provide or directly supervise staff who provide personal care to residents successfully complete an 80-hour personal care training and competency evaluation program, established by the Department. Directly supervise means being on duty in the facility to oversee or direct the performance of staff duties. Copies of the 80-hour training and competency evaluation program are available at the

cost of printing and mailing by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(b) The facility shall assure that training specified in Paragraph (a) of this Rule is successfully completed within six months after hiring for staff hired after September 1, 2003. Documentation of the successful completion of the 80-hour training and competency evaluation program shall be maintained in the facility and available for review.

(c) The Department shall exempt staff from the 80-hour training and competency evaluation program who are:

- (1) licensed health professionals;
- (2) listed on the Nurse Aide Registry; or
- (3) documented as having successfully completed a 40-45 hour or 75-80 hour training program or competency evaluation program approved by the Department since January 1, 1996.

(d) The facility shall assure that staff who perform or directly supervise staff who perform personal care receive on-the-job training and supervision as necessary for the performance of individual job assignments prior to meeting the training and competency requirements of this Rule. Documentation of the on-the-job training shall be maintained in the facility and available for review.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0502 PERSONAL CARE TRAINING CONTENT AND INSTRUCTORS

(a) The 45-hour training specified in Rule .1410 of this Section shall consist of at least 24 hours of classroom instruction, and the remaining hours shall be supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) personal care skills;
- (2) cognitive, behavioral and social care for all residents and including interventions to reduce behavioral problems for residents with mental disabilities; and
- (3) residents' rights as established by G.S. 131D-21.

(b)(a) The 80-hour training specified in Rule .1410 .0501 of this Section shall consist of at least 34 hours of classroom instruction and at least 34 hours of supervised practical experience. Competency evaluation shall be conducted in each of the following areas:

- (1) observation and documentation;
- (2) basic nursing skills, including special health-related tasks;
- (3) personal care skills;
- (4) cognitive, behavioral and social care for all residents and, including interventions to reduce behavioral problems for residents with mental disabilities;
- (5) basic restorative services; and
- (6) residents' rights as established by G.S. 131D-21.

(e)(b) The following requirements shall apply to the 45-and-80-hour training specified in Rule .1410 .0501 of this Section:

PROPOSED RULES

- (1) The training shall be conducted by an individual or a team of instructors with a coordinator. The supervisor of practical experience and instructor of content having to do with personal care tasks or basic nursing skills shall be a registered nurse with a current, unencumbered license in North Carolina and with two years of clinical or direct patient care experience working in a health care, home care or long term care setting. The program coordinator and any instructor of content that does not include instruction on personal care tasks or basic nursing skills shall be a registered nurse, licensed practical nurse, physician, gerontologist, social worker, psychologist, mental health professional or other health professional with two years of work experience in adult education or in a long term care setting; or a four-year college graduate with four years of experience working in the field of aging or long term care for adults.
- (2) A trainee participating in the classroom instruction and supervised practical experience in the setting of the trainee's employment shall not be considered on duty and counted in the staff-to-resident ratio.
- (3) Training shall not be offered without a qualified instructor on site.
- (4) Classroom instruction shall include the opportunity for demonstration and practice of skills.
- (5) Supervised practical experience shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the trainee will be performing or supervising the personal care skills.
- (6) All skills shall be performed on humans except for intimate care skills, such as perineal and catheter care, which may be conducted on a mannequin.
- (7) There shall be no more than 10 trainees for each instructor for the supervised practical experience.
- (8) A written examination prepared by the instructor shall be used to evaluate the trainee's knowledge of the content portion of the classroom training. The trainee shall score at least 70 on the written examination. Oral testing shall be provided in the place of a written examination for trainees lacking reading or writing ability.
- (9) The trainee shall satisfactorily perform all of the personal care skills required in the training program, programs specified in Rule .1410(h) and the skills specified in Rule .1410(j) of this Section for the 45-hour training and in Rules .1410(h), (i) and (j) of this Section for the 80-hour training. The instructor shall use a skills performance checklist for this competency

~~evaluation, evaluation that includes, at least, all those skills specified in Rules .1410(h) and (j) of this Section for the 45-hour training and all those skills specified in Rules .1410(h), (i) and (j) of this Section for the 80-hour training.~~ Satisfactory performance of the personal care skills and interpersonal and behavioral intervention skills means that the trainee performed the skill unassisted; explained the procedure to the resident; explained to the instructor, prior to or after the procedure, what was being done and why it was being done in that way; and incorporated the principles of good body mechanics, medical asepsis and resident safety and privacy.

- (10) The training provider shall issue to all trainees who successfully complete the training a certificate, signed by the registered nurse who conducted the skills competency evaluation, stating that the trainee successfully completed the ~~45 or 80-hour training.~~ The trainee's name shall be on the certificate. The training provider shall maintain copies of the certificates and the skills evaluation checklists for a minimum of five years.

~~(d)(c)~~ An individual, agency or organization seeking to provide the ~~45 or 80-hour training and competency evaluation~~ specified in Rule ~~.1410 .0501~~ of this Section shall submit ~~the following information to the Adult Care Licensure Section of the Division of Facility Services:~~ an application which is available at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center Raleigh, North Carolina ~~27699-2708; 27699-2708.~~

- ~~(1) an application which is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center Raleigh, North Carolina 27699-2708;~~
- ~~(2) a statement of training program philosophy;~~
- ~~(3) a statement of training program objectives for each content area;~~
- ~~(4) a curriculum outline with specific hours for each content area;~~
- ~~(5) teaching methodologies, a list of texts or other instructional materials and a copy of the written exam or testing instrument with an established passing grade;~~
- ~~(6) a list of equipment and supplies to be used in the training;~~
- ~~(7) procedures or steps to be completed in the performance of the personal care and basic nursing skills;~~
- ~~(8) sites for classroom and supervised practical experience, including the specific settings or rooms within each site;~~
- ~~(9) resumes of all instructors and the program coordinator, including current RN certificate numbers as applicable;~~
- ~~(10) policy statements that address the role of the registered nurse, instructor to trainee ratio for the supervised practical experience, retention~~

~~of trainee records and attendance requirements;~~

~~(11) a skills performance checklist as specified in Subparagraph (c)(9) of this Rule; and~~

~~(12) a certificate of successful completion of the training program.~~

~~(e) The following requirements shall apply to the competency evaluation for purposes of exempting adult care home staff from the 45 or 80 hour training as required in Rule 1410 of this Section:~~

~~(1) The competency evaluation for purposes of exempting adult care home staff from the 45 or 80 hour training shall consist of the satisfactory performance of personal care skills according to the requirement in Subparagraph (c)(9) of this Rule.~~

~~(2) Any person who conducts the competency evaluation for exemption from the 45 or 80 hour training shall be a registered nurse with the same qualifications specified in Subparagraph (c)(1) of this Rule.~~

~~(3) The competency evaluation shall be conducted in a licensed adult care home or in a facility or laboratory setting comparable to the work setting in which the participant will be performing or supervising the personal care skills.~~

~~(4) All skills being evaluated shall be performed on humans except for intimate care skills such as perineal and catheter care, which may be performed on a mannequin.~~

~~(5) The person being competency evaluated in the setting of the person's employment shall not be considered on duty and counted in the staff to resident ratio.~~

~~(6) An individual, agency or organization seeking to provide the competency evaluation for training exemption purposes shall complete an application available at no charge from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, North Carolina 27699-2708 and submit it to the Adult Care Licensure Section along with the following information:~~

~~(A) resume of the person performing the competency evaluation, including the current RN certificate number;~~

~~(B) a certificate, with the signature of the evaluating registered nurse and the participant's name, to be issued to the person successfully completing the competency evaluation;~~

~~(C) procedures or steps to be completed in the performance of the personal care and basic nursing skills;~~

~~(D) skills performance checklist as specified in Subparagraph (c)(9) of this Rule;~~

~~(E) a site for the competency evaluation; and~~

~~(F) a list of equipment, materials and supplies.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0503 MEDICATION ADMINISTRATION COMPETENCY

Rule 10 NCAC 42C .2014 shall control for this Subchapter.

(a) The competency evaluation for medication administration shall consist of a written examination and a clinical skills evaluation to determine competency in the following areas: medical abbreviations and terminology; transcription of medication orders; obtaining and documenting vital signs; procedures and tasks involved with the preparation and administration of oral (including liquid, sublingual and inhaler), topical (including transdermal), ophthalmic, otic, and nasal medications; infection control procedures; documentation of medication administration; monitoring for reactions to medications and procedures to follow when there appears to be a change in the resident's condition or health status based on those reactions; medication storage and disposition; regulations pertaining to medication administration in adult care facilities; and the facility's medication administration policy and procedures.

(b) An individual shall score at least 90% on the written examination which shall be a standardized examination established by the Department.

(c) A certificate of successful completion of the written examination shall be issued to each participant successfully completing the examination. A copy of the certificate shall be maintained and available for review in the facility. The certificate is transferable from one facility to another as proof of successful completion of the written examination. A medication study guide for the written examination is available at no charge by contacting the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

(d) The clinical skills validation portion of the competency evaluation shall be conducted by a registered nurse or a registered pharmacist consistent with their occupational licensing laws and who has a current unencumbered license in North Carolina. This validation shall be completed for those medication administration tasks to be performed in the facility. Competency validation by a registered nurse is required for unlicensed staff who perform any of the personal care tasks related to medication administration specified in Rule .0903 of this Subchapter.

(e) The Medication Administration Skills Validation Form shall be used to document successful completion of the clinical skills validation portion of the competency evaluation for those medication administration tasks to be performed in the facility employing the medication aide. Copies of this form and instructions for its use may be obtained at no cost by contacting the Adult Care Licensure Section, Division of Facility Services, 2708 Mail Service Center, Raleigh, NC 27699-2708. The completed form shall be maintained and available for review in the facility and is not transferable from one facility to another.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0504 COMPETENCY VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS

(a) The facility shall assure that non-licensed personnel and licensed personnel not practicing in their licensed capacity as governed by their practice act and occupational licensing laws are competency validated by return demonstration for any personal care task specified in Paragraphs (a)(1)-(a)(28) of Rule .0903 of this Subchapter prior to staff performing the task and that their ongoing competency is assured through facility staff oversight and supervision.

(b) Competency validation shall be performed by the following licensed health professionals:

- (1) A registered nurse shall validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(1)-(a)(28) of Rule .0903 of this Subchapter.
- (2) In lieu of a registered nurse, a respiratory care practitioner licensed under G.S. 90, Article 38, may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (a)(11), (a)(16), (a)(18), (a)(19) and (a)(21) of Rule .0903 of this Subchapter.
- (3) In lieu of a registered nurse, a registered pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(8) of Rule .0903 of this Subchapter.
- (4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22)-(a)(27) of Rule .0903 of this Subchapter.

(c) Competency validation of staff, according to Paragraph (a) of this Rule, for the licensed health professional support tasks specified in Paragraph (a) of Rule .0903 of this Subchapter and the performance of these tasks is limited exclusively to these tasks.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0505 TRAINING ON CARE OF DIABETIC RESIDENTS

The facility shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows:

- (1) Training shall be provided by a registered nurse, registered pharmacist or prescribing practitioner; and
- (2) Training shall include at least the following:
 - (a) basic facts about diabetes and care involved in the management of diabetes;
 - (b) insulin action;
 - (c) insulin storage;
 - (d) mixing, measuring and injection techniques for insulin administration;

- (e) treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;
- (f) blood glucose monitoring;
- (g) universal precautions;
- (h) appropriate administration times; and
- (i) sliding scale insulin administration.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0506 TRAINING ON PHYSICAL RESTRAINTS

(a) The facility shall assure that all staff responsible for caring for residents with medical symptoms that warrant restraints are trained on the use of alternatives to physical restraint use and on the care of residents who are physically restrained.

(b) Training shall be provided by a registered nurse and shall include the following:

- (1) alternatives to physical restraints;
- (2) types of physical restraints;
- (3) medical symptoms that warrant physical restraint;
- (4) negative outcomes from using physical restraints;
- (5) correct application of physical restraints;
- (6) monitoring and caring for residents who are restrained; and
- (7) the process of reducing restraint time by using alternatives.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0507 TRAINING ON CPR

Each facility shall have at least one staff person on the premises at all times who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management, including the Heimlich maneuver, provided by an organization that has a nationally recognized course or program in cardio-pulmonary resuscitation, including the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute and Medic First Aid, or by a trainer with documented certification as a trainer on these procedures from one of these organizations.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0508 ASSESSMENT TRAINING

The person or persons designated by the administrator to perform resident assessments as required by Rule .0801 of this Subchapter shall successfully complete training according to an instruction manual on resident assessment established by the Department before performing the required assessments. Registered nurses are exempt from the assessment training. The instruction manual on resident assessment is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or it is available at the cost of printing and mailing from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L.2002-0160.

10A NCAC 13F .0512 DOCUMENTATION OF TRAINING AND COMPETENCY VALIDATION

The facility shall maintain documentation of the training and competency validation of staff required by the rules of this Section in the facility and available for review.

Authority 131 -2; 143B-165; S.L. 2002-0160.

SECTION .0600 – STAFFING

10A NCAC 13F .0601 MANAGEMENT OF FACILITIES WITH A CAPACITY OR CENSUS OF SEVEN TO THIRTY RESIDENTS

~~(a) The requirements in Paragraphs (a) and (c) of Rule 10-NCAC 42C .1901 shall control for this Subchapter for facilities with a capacity or census of 7 to 30 residents.~~

~~(a) The administrator is responsible for the total operation of a home and is also responsible to the licensing agency and the monitoring agency for meeting and maintaining the rules of this Subchapter. The co-administrator, when there is one, shares equal responsibility with the administrator for the operation of the home and for meeting and maintaining the rules of this Subchapter. The term administrator also refers to co-administrator where it is used in this Subchapter.~~

~~(b) At all times there shall be one administrator or administrator-in-charge who is directly responsible for assuring that all required duties are carried out in the home and for assuring that at no time is a resident left alone in the home without a staff member. One of the following arrangements shall be used to manage a facility with a capacity of 7 to 30 residents:~~

- ~~(1) The administrator is in the home or within 500 feet of the home and immediately available. To be immediately available, the administrator shall be on stand-by and have direct access to either a two-way intercom system or a two-way intercom line on the existing telephone system that connects the licensed home with the private residence of the administrator. The equipment installed shall be in working condition and must be located in the bedroom of the administrator; or~~
- ~~(2) An administrator-in-charge is in the home or within 500 feet of the home and is immediately available. The conditions of being "immediately available" cited in Subparagraph (b)(1) of this Rule shall apply to this arrangement; or~~
- ~~(3) When there is a cluster of licensed homes, each with a capacity of 7 to 12 residents, located adjacently on the same site, there shall be at least one staff member, either live-in or on a shift basis in each of these homes. In addition, there shall be at least one administrator or administrator-in-charge who is within 500 feet of each home, immediately available, and directly responsible for assuring that all required duties are carried out in each home. To be immediately available, the administrator or administrator-in-charge shall be on stand-by and have direct access to either~~

a two-way intercom system or a two-way intercom line on the existing telephone system that connects these homes with each other and with the residence of the administrator or administrator-in-charge. The equipment installed shall be in working condition and shall be located in the bedroom of the administrator or administrator-in-charge.

(c) When the administrator or administrator-in-charge is absent from the home or not immediately available, the following apply:

- (1) If the administrator or administrator-in-charge is absent temporarily (not to exceed 24 hours per week), a relief-person-in-charge shall be designated by the administrator to be in the home and in charge of it during the absence. The administrator shall assure that the relief-person-in-charge is prepared to respond appropriately in case of an emergency in the home. The relief-person-in-charge shall be 21 years or older; and
- (2) When the administrator or administrator-in-charge will be away from the home for an extended absence (more than 24 hours per week), a relief-administrator-in-charge shall be designated by the administrator to be in charge of the home during the absence. The relief-administrator-in-charge shall meet all of the qualifications required for the administrator-in-charge as specified in Rule .0402 of this Subchapter with the exception of Subparagraph (4) of Rule .0402 pertaining to the continuing education requirement.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

SECTION .0700 - ADMISSION AND DISCHARGE

10A NCAC 13F .0701 ADMISSION OF RESIDENTS

~~The rules stated in 10 NCAC 42C .2400 shall control for this Subchapter.~~

~~(a) Any adult (18 years of age or over) who, because of a temporary or chronic physical condition or mental disability, needs a substitute home may be admitted when, in the opinion of the resident, physician, family or social worker, and the administrator the services and accommodations of the home will meet his particular needs.~~

~~(b) People are not to be admitted:~~

- ~~(1) for treatment of mental illness, or alcohol or drug abuse;~~
- ~~(2) for maternity care;~~
- ~~(3) for professional nursing care under continuous medical supervision;~~
- ~~(4) for lodging, when the personal assistance and supervision offered for the aged and disabled are not needed; or~~
- ~~(5) who pose a direct threat to the health or safety of others.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0702 DISCHARGE OF RESIDENTS

The rules stated in 10 NCAC 42C .2500 shall control for this Subchapter.

(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and the facility not holding the bed for the resident based on the facility's bed hold policy.

Note: The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule would apply.

(b) The discharge of a resident shall be based on one of the following reasons:

- (1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (3) the safety of other individuals in the facility is endangered;
- (4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;
- (5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2(a)(1).

(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's needs cannot be met in the facility under Subparagraph (b)(1) of this Rule; or
- (2) reasons under Subparagraphs (b)(2), (b)(3), (b)(4) and (b)(6) of this Rule exist.

(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

- (1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
- (2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
- (3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or
- (4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a)(1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.

(e) The facility shall assure the following requirements for written notice are met before discharging a resident:

- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505.
- (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated.
- (3) Failure to use and simultaneously provide the specific forms according to Paragraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services.
- (4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.

(f) The facility shall provide assistance in preparing for a safe and orderly discharge as evidenced by:

- (1) notifying staff in the county department of social services responsible for placement services;
- (2) explaining to the resident and responsible person or legal representative why the discharge is necessary;

PROPOSED RULES

- (3) informing the resident and responsible person or legal representative about an appropriate discharge destination; and
- (4) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (B) a copy of the resident's current physician orders;
 - (C) a list of the resident's current medications;
 - (D) the resident's current medications; and
 - (E) a record of the resident's vaccinations and TB screening.

(g) If an appeal hearing is requested:

- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and
- (2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.

(h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person prior to the resident leaving the facility. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0703 TUBERCULOSIS TEST, MEDICAL EXAMINATION AND IMMUNIZATIONS

- (a) Upon admission to the facility, each resident shall be tested for tuberculosis disease in compliance with the control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.
- (b) Each resident shall have a medical examination prior to admission to the facility and annually thereafter.
- (c) The results of the complete examination required in Paragraph (b) of this Rule are to be entered on the FL-2 or MR-2 which shall comply with the following:

- (1) The examining date recorded on the FL-2 or MR-2 shall be no more than 90 days prior to the person's admission to the home;
- (2) The FL-2 or MR-2 shall be in the facility before admission or accompany the resident upon admission and be reviewed by the facility before admission except for emergency admissions;
- (3) In the case of an emergency admission, the medical examination and completion of the FL-2 or MR-2 as required by this rule shall be within 72 hours of admission as long as current medication and treatment orders are available upon admission or there has been an emergency medical evaluation, including any orders for medications and treatments, upon admission;
- (4) If the information on the FL-2 or MR-2 is not clear or is insufficient, the facility shall contact the physician for clarification in order to determine if the services of the facility can meet the individual's needs;
- (5) The completed FL-2 or MR-2 shall be filed in the resident's record in the home; and
- (6) If a resident has been hospitalized, the facility shall have a completed FL-2 or MR-2 or a transfer form or discharge summary with signed prescribing practitioner orders upon the resident's return to the facility from the hospital.

(d) Each resident shall be immunized against pneumococcal disease and annually against influenza virus according to G.S. 13D-9, except as otherwise indicated in this law.

(e) The facility shall make arrangements for any resident, who has been an inpatient of a psychiatric facility within 12 months before entering the home and who does not have a current plan for psychiatric care, to be examined by a local physician or a physician in a mental health center within 30 days after admission and to have a plan for psychiatric follow-up care when indicated.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

SECTION .0800 - RESIDENT ASSESSMENT AND CARE PLAN

10A NCAC 13F .0801 RESIDENT ASSESSMENT

~~10 NCAC 42C .3701 shall control for this Subchapter.~~

- (a) The facility shall assure that an initial assessment of each resident is completed within 72 hours of admission using the Resident Register.
- (b) The facility shall assure an assessment of each resident is completed within 30 days following admission and at least annually thereafter using an assessment instrument established by the Department or an instrument approved by the Department based on it containing at least the same information as required on the established instrument. The assessment to be completed within 30 days following admission and annually thereafter is a functional assessment to determine a resident's level of functioning to include psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities

of daily living are personal functions essential for the health and well-being of the resident which are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

(c) The facility shall assure an assessment of a resident is completed within 10 days following a significant change in the resident's condition using the assessment instrument required in Paragraph (b) of this Rule. For the purposes of this Subchapter, significant change in the resident's condition is defined as follows:

- (1) Significant change is one or more of the following:
 - (A) deterioration in two or more activities of daily living;
 - (B) change in ability to walk or transfer;
 - (C) change in the ability to use one's hands to grasp small objects;
 - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
 - (E) no response by the resident to the treatment for an identified problem;
 - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
 - (G) threat to life such as stroke, heart condition, or metastatic cancer;
 - (H) emergence of a pressure ulcer at Stage II or higher;
 - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time such as initial diagnosis of Alzheimer's disease or diabetes;
 - (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;
 - (K) new onset of impaired decision-making;
 - (L) continence to incontinence or indwelling catheter; or
 - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
 - (A) changes that suggest slight upward or downward movement in the resident's status;
 - (B) short-term changes that resolve with or without intervention;
 - (C) changes that arise from easily reversible causes;

- (D) a short-term acute illness or episodic event;
- (E) a well-established, predictive, cyclical pattern; or
- (F) steady improvement under the current course of care.

(d) If a resident experiences a significant change as defined in Paragraph (c) of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record.

(e) The assessments required in Paragraphs (b) and (c) of this Rule shall be completed and signed by the person designated by the administrator to perform resident assessments.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

10A NCAC 13F .0802 RESIDENT CARE PLAN

~~10 NCAC 42c .3702 shall control for this Subchapter.~~

(a) The facility shall assure a care plan is developed for each resident in conjunction with the resident assessment to be completed within 30 days following admission according to Rule .0801 of this Section. The care plan is an individualized, written program of personal care for each resident.

(b) The care plan shall be revised as needed based on further assessments of the resident according to Rule .0801 of this Section.

(c) The care plan shall include the following:

- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
- (2) frequency of the service provision.

(d) The assessor shall sign the care plan upon its completion.

(e) The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:

- (1) the resident is under the physician's care; and
- (2) the resident has a medical diagnosis with associated physical or mental limitations that justify the personal care services specified in the care plan.

Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-153; 143B-165; S.L. 99-0334; 2002-0160.

SECTION .0900 - RESIDENT CARE AND SERVICES

10A NCAC 13F .0902 HEALTH CARE

~~(a) The administrator is responsible for providing occasional or incidental medical care, such as providing therapeutic diets, rotating positions of residents confined to bed, and applying heat pads.~~

~~(b) The resident or his responsible person shall be allowed to choose a physician to attend to him.~~

~~(c) Immediate arrangements shall be made by the administrator with the resident or his responsible person for the resident to secure another physician when he cannot remain under the care~~

of his own physician. The name, address and telephone number of the resident's physician shall be recorded on the Resident Register.

(d) If a resident is hospitalized, a completed FL-2 or patient transfer form shall be obtained before the resident can be readmitted to the facility.

(e) Between annual medical examinations there may be a need for a physician's care. The resident's health services record is to be used by the physician to report any drugs prescribed and any treatment given or recommended for minor illnesses.

(f) All contacts (office, home or telephone) with the resident's physician shall be recorded on the resident's health services record which is to be retained in the resident's record in the home. The physician's orders shall be included in the resident's health services record including telephone orders initiated by staff and signed by the physician within 15 days from the date the order is given.

(g) Effective January 1, 2001, the following restraint requirements shall apply. The use of physical restraints refers to the application of a physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily which restricts freedom of movement or normal access to one's body and includes bed rails when used to keep the resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Residents shall be physically restrained only in accordance with the following:

- (1) The facility shall prohibit the use of physical restraints for discipline or convenience and limit restraint use to circumstances in which the resident has medical symptoms that warrant the use of restraints. Medical symptoms may include, but are not limited to, the following: confusion with risk of falls; and risk of abusive or injurious behaviors to self or others.
- (2) Alternatives to physical restraints that would provide safety to the resident and prevent a potential for decline in the resident's functioning shall be provided prior to restraining the resident and documented in the medical record. Alternatives may include, but are not limited to, the following: providing restorative care to enhance abilities to stand safely and to walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, providing supportive devices such as wedge cushions, controlling pain and providing a calm relaxing environment with minimal noise and confusion.
- (3) If alternatives to physical restraints have failed and the resident's medical symptoms warrant the use of physical restraints, the facility shall assure that the resident is restrained with the least restrictive restraint that would provide safety.
- (4) When physical restraints are used, the facility shall engage in a systemic and gradual process

towards reducing restraint time by using alternatives.

- (5) ~~The administrator shall assure the development and implementation of written policies and procedures in the use of alternatives to physical restraints and in the care of residents who are physically restrained.~~
 - (A) ~~The administrator shall consult with a registered nurse in developing policies and procedures for alternatives to physical restraints and in the care of residents who are physically restrained.~~
 - (B) ~~Policies and procedures for alternatives to physical restraints and the use of physical restraints shall comply with requirements of this section. Orientation of these policies and procedures shall be provided to staff responsible for the care of residents who are restrained or require alternatives to restraints. This orientation shall be provided as part of the training required prior to staff providing care to residents who are restrained or require alternatives to restraints.~~
- (6) The administrator shall assure that each resident with medical symptoms that warrant the use of physical restraints is assessed and a care plan is developed. This assessment and care planning shall be completed prior to the resident being restrained; except in emergency situations. This assessment and care planning must meet any additional requirements in Section .0800 of this Subchapter
 - (A) *The assessment shall include consideration of the following:*
 - (i) Medical symptoms that warrant the use of a physical restraint;
 - (ii) How the medical symptoms affect the resident;
 - (iii) When the medical symptoms were first observed;
 - (iv) How often the medical symptoms occur; and
 - (v) Alternatives that have been provided and the resident's response.
 - (B) The care plan shall be individualized and indicate specific care to be given to the resident. The care plan shall include consideration of the following:
 - (i) Alternatives and how the alternatives will be used;
 - (ii) The least restrictive type of physical restraint that would provide safety; and

- (iii) ~~Care to be provided to the resident during the time the resident is restrained.~~
- (C) ~~The assessment and care planning shall be completed through a team process. The team must consist of, but is not limited to, the following: the supervisor or a personal care aide, a registered nurse and the resident's representative. If the resident's representative is not present, there must be documented evidence that the resident's representative was notified and declined an invitation to attend.~~
- (7) ~~The resident's right to participate in his or her care and to refuse treatment includes the right to accept or refuse restraints. For the resident to make an informed choice about the use of physical restraints, negative outcomes, benefits and alternatives to restraint use shall be explained to the resident. Potential negative outcomes include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact. In the case of a resident who is incapable of making a decision, the resident's representative shall exercise this right based on the same information that would have been provided to the resident. However, the resident's representative cannot give permission to use restraints for the sake of discipline or staff convenience or when the restraint is not necessary to treat the resident's medical symptoms.~~
- (8) ~~The resident or the resident representative involvement in the restraint decision shall be documented in the resident's medical record. Documentation shall include the following:~~
 - (A) ~~The resident or the resident's representative shall sign and date a statement indicating they have been informed as required above.~~
 - (B) ~~The statement shall indicate the resident's or the resident's representative's decision in restraint use, either consent for or a desire not to use restraints.~~
 - (C) ~~The consent shall include the type of restraint to be used and the medical symptoms for use.~~
- (9) ~~When a physical restraint is warranted and consent has been given, a physician's order shall be written. The following requirements apply to the physician's order:~~
 - (A) ~~The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days.~~
 - (B) ~~In emergency situations, the administrator or supervisor in charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours.~~
 - (C) ~~The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked and removed.~~
 - (D) ~~The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders).~~
 - (E) ~~The physician ordering the physical restraint shall update the restraint order at a minimum of every three months.~~
 - (F) ~~If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order.~~
- (10) ~~The physical restraint shall be applied correctly according to manufacture's instructions and the physician's order.~~
- (11) ~~The resident shall be checked and released from the physical restraint and care provided as stated in the care plan; at least every 15 minutes for checks and at least every 2 hours for release.~~
- (12) ~~Alternatives shall be provided in an effort to reduce restraint time.~~
- (13) ~~All instances of physical restraint use shall be documented and shall include at least the following:~~
 - (A) ~~Alternatives to physical restraints that were provided and the resident's response;~~
 - (B) ~~Type of physical restraint that was used;~~
 - (C) ~~Medical symptoms warranting the use of the physical restraint;~~
 - (D) ~~Time and duration of the physical restraint;~~
 - (E) ~~Care that was provided to the resident during the restraint use; and~~
 - (F) ~~Behaviors of the resident during the restraint use.~~
- (14) ~~Physical restraints shall be applied only by staff who have received training and who have been validated for competency by a registered nurse~~

~~on the proper use of restraints. Training and competency validation on restraints shall occur before staff members apply restraints.~~

~~(h) The administrator shall have specific written instructions recorded as to what to do in case of sudden illness, accident, or death of a resident.~~

~~(i) There shall be an adequate supply of first aid supplies available in the home for immediate use.~~

~~(j) The administrator shall make arrangements with the resident, his responsible person, the county department of social services or other appropriate party for appropriate health care as needed to enable the resident to be in the best possible health condition.~~

~~(a) The facility shall provide care and services in accordance with the resident's care plan.~~

~~(b) The facility shall assure arrangements are made to enable the resident to be in the best possible health condition as evidenced by documentation of the following in the resident's record:~~

- ~~(1) facility contacts with the resident's physician, physician service or other licensed health professional when illnesses or accidents occur and any other facility contacts with a physician or licensed health professional regarding resident care;~~
- ~~(2) all visits of the resident to or from the residents physician, physician service or other licensed health professional of which the facility is aware;~~
- ~~(3) written procedures, treatments or orders from a physician or other licensed health professional; and~~
- ~~(4) implementation of procedures, treatments or orders specified in Subparagraph (b)(3) of this Rule.~~

~~(c) The following shall apply to the resident's physician or physician service:~~

- ~~(1) The resident or the resident's responsible person shall be allowed to choose a physician or physician service to attend the resident; and~~
- ~~(2) When the resident cannot remain under the care of the chosen physician or physician service, the facility shall assure that arrangements are made with the resident or responsible person for choosing and securing another physician or physician service within 45 days or prior to the signing of the care plan as required in Rule .0802 of this Subchapter.~~

Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160; 2003-0284.

10A NCAC 13F .0903 LICENSED HEALTH PROFESSIONAL SUPPORT

~~10 NCAC 42C .3703 shall control for this Subchapter.~~

~~(a) The facility shall assure that an appropriate licensed health professional participates in the on-site review and evaluation of the residents' health status, care plan and care provided for residents requiring, but not limited to, one or more of the following personal care tasks:~~

- ~~(1) applying and removing ace bandages, ted hose, binders, and braces and splints;~~

- ~~(2) feeding techniques for residents with swallowing problems;~~
- ~~(3) bowel or bladder training programs to regain continence;~~
- ~~(4) enemas, suppositories and vaginal douches;~~
- ~~(5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;~~
- ~~(6) chest physiotherapy or postural drainage;~~
- ~~(7) clean dressing changes, excluding packing wounds and application of prescribed enzymatic debriding agents;~~
- ~~(8) collecting and testing of fingerstick blood samples;~~
- ~~(9) care of well-established colostomy or ileostomy (having a healed surgical site without sutures or drainage);~~
- ~~(10) care for pressure ulcers up to and including a Stage II pressure ulcer which is a superficial ulcer presenting as an abrasion, blister or shallow crater;~~
- ~~(11) inhalation medication by machine;~~
- ~~(12) forcing and restricting fluids;~~
- ~~(13) maintaining accurate intake and output data;~~
- ~~(14) medication administration through a well-established gastrostomy feeding tube (having a healed surgical site without sutures or drainage and through which a feeding regimen has been successfully established);~~
- ~~(15) medication administration through injection; Note: Unlicensed staff may only administer subcutaneous injections, excluding anticoagulants such as heparin.~~
- ~~(16) oxygen administration and monitoring;~~
- ~~(17) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;~~
- ~~(18) oral suctioning;~~
- ~~(19) care of well-established tracheostomy, not to include indo-tracheal suctioning;~~
- ~~(20) administering and monitoring of tube feedings through a well-established gastrostomy tube (see description in Subparagraph (14) of this Paragraph);~~
- ~~(21) the monitoring of continuous positive air pressure devices (CPAP and BIPAP);~~
- ~~(22) application of prescribed heat therapy;~~
- ~~(23) application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;~~
- ~~(24) ambulation using assistive devices that requires physical assistance;~~
- ~~(25) range of motion exercises;~~
- ~~(26) any other prescribed physical or occupational therapy;~~
- ~~(27) transferring semi-ambulatory or non-ambulatory residents; or~~
- ~~(28) nurse aide II tasks according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.~~

(b) The appropriate licensed health professional, as required in Paragraph (a) of this Rule, is:

- (1) a registered nurse licensed under G.S. 90, Article 9A, for tasks listed in Subparagraphs (a)(1)-(a)(28) of this Rule;
- (2) an occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B for tasks listed in Subparagraphs (a)(17) and (a)(22)-(a)(27) of this Rule;
- (3) a respiratory care practitioner licensed under G.S. 90, Article 38, for tasks listed in Subparagraphs (a)(6), (11), (16), (18), (19) and (21) of this Rule; or
- (4) a registered nurse licensed under G.S. 90, Article 9A, for tasks that can be performed by a nurse aide II according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.

(c) The facility shall assure that participation by a registered nurse, occupational therapist or physical therapist in the on-site review and evaluation of the residents' health status, care plan and care provided, as required in Paragraph (a) of this Rule, is completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter, and includes the following:

- (1) performing a physical assessment of the resident as related to the resident's diagnosis or current condition requiring one or more of the tasks specified in Paragraph (a) of this Rule;
- (2) evaluating the resident's progress to care being provided;
- (3) recommending changes in the care of the resident as needed based on the physical assessment and evaluation of the progress of the resident; and
- (4) documenting the activities in Subparagraphs (1) through (3) of this Paragraph.

(d) The facility shall assure action is taken in response to the licensed health professional review and documented, and that the physician or appropriate health professional is informed of the recommendations when necessary.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334; 2002-0160.

10A NCAC 13F .0904 NUTRITION AND FOOD SERVICE

(a) The requirements in 10 NCAC 42C .2303 shall control for this Subchapter, except that:

- (1) Menus must be prepared at least two weeks in advance; and
- (2) Item and quantity must be specified on the invoices or other appropriate receipts of food purchases.

(b) In addition to the requirements in 10 NCAC 42C .2303, space must be provided for storage of dry, refrigerated and frozen food items to comply with sanitation regulations.

(a) Food Procurement and Safety:

- (1) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.
- (2) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.
- (3) All meat processing shall occur at a USDA-approved processing plant.
- (4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.

(b) Food Preparation and Service:

- (1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.
- (2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the resident.
- (3) Hot foods shall be served hot and cold foods shall be served cold.
- (4) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

(c) Menus:

- (1) Menus shall be prepared at least one week in advance with serving quantities specified and in accordance with the Daily Food Requirements in Paragraph (d) of this Rule.
- (2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.
- (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.
- (4) Menus shall be planned to take into account the food preferences and customs of the residents.
- (5) Menus as served and invoices or other appropriate receipts of purchases shall be maintained in the facility for 30 days.
- (6) Menus for all therapeutic diets shall be planned or reviewed and signed by a registered dietitian with the registered dietitian's registration number included.
- (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.

(d) Daily Food Requirements:

- (1) Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
- (2) Foods and beverages that are appropriate to residents' diets shall be offered or made

PROPOSED RULES

available to all residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.

(3) Daily menus for regular diets shall include the following:

(A) Homogenized whole milk, low fat milk, skim milk or buttermilk: One cup (eight ounces) of pasteurized milk at least twice a day. Reconstituted dry milk or diluted evaporated milk may be used in cooking only and not for drinking purposes due to risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used.

(B) Fruit: Two servings of fruit (one serving equals six ounces of juice; ½ cup of raw, canned or cooked fruit; one medium-size whole fruit; or ¼ cup dried fruit). One serving shall be a citrus fruit or a single strength juice in which there is 100% of the recommended dietary allowance of vitamin C in each six ounces of juice. The second fruit serving shall be of another variety of fresh, dried or canned fruit.

(C) Vegetables: Three servings of vegetables (one serving equals ½ cup of cooked or canned vegetable; six ounces of vegetable juice; or 1 cup of raw vegetable). One of these shall be a dark green, leafy or deep yellow three times a week.

(D) Eggs: One whole egg or appropriate substitute (e.g., two egg whites or ¼ cup of pasteurized egg product) at least three times a week at breakfast.

(E) Protein: two-three ounces of pure cooked meat two to three times a day. An appropriate substitute (e.g., four tablespoons of peanut butter, one cup of cooked dried peas or beans or two ounces of pure cheese) may be served three times a week but not more than once a day, unless requested by the resident.

Note: Bacon is considered to be fat and not meat for the purposes of this Rule.

(F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or grain products a day. Examples of one serving are as follows: one slice of bread; ½ of a bagel, English muffin or hamburger bun; one small muffin, roll, biscuit or piece of cornbread; ½ cup cooked rice or cereal (e.g., oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle,

pancake or tortilla that is six inches in diameter. Cereals and breads offered as snacks can be included in meeting this requirement.

(G) Fats: Include butter, oil, margarine or items consisting primarily of one of these (e.g., icing or gravy).

(H) Water and Other Beverages: Water shall be served to each resident at each meal, in addition to other beverages.

(e) Therapeutic Diets:

(1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician. Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled ADA diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a registered dietitian.

(2) Physician orders for nutritional supplements shall be in writing from the resident's physician and be brand specific, unless the facility has defined a house supplement in its communication to the physician, and shall specify quantity and frequency.

(3) The facility shall maintain an accurate and current listing of residents with physician-ordered therapeutic diets for guidance of food service staff.

(4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as ordered by the resident's physician.

(f) Individual Feeding Assistance:

(1) Sufficient staff shall be available for individual feeding assistance as needed.

(2) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the resident's record.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0905 ACTIVITIES PROGRAM

~~The requirements in 10 NCAC 42C .2304 shall control for this Subchapter.~~

(a) Each home shall develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community. The program is to provide social, physical, intellectual, and recreational activities in a planned, coordinated, and structured manner, using the Activities Coordinator's Guide, a copy of which each facility is required to have. When there is a cluster of homes, one Activities Coordinator's Guide may be shared by the homes.

(b) The program shall be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his will.

(c) Each home shall assign a person to be the activities coordinator, who meets the qualifications specified in Rule.0404 of this Subchapter. The activities coordinator is responsible for responding to the residents' need and desire for meaningful activities, by:

- (1) Reviewing upon admission personal information about each resident's interests and capabilities recorded on an individualized index card or the equivalent. This card is to be completed from, at least, the information recorded on the Resident Register, Form DSS-1865. It shall be maintained for use by the activities coordinator for developing activities and is to be updated as needed;
- (2) Using the information on the residents' interests and capabilities to arrange for and provide planned individual and group activities for the residents. In addition to individual activities, there shall be a minimum of 10 hours of planned group activities per week. Homes designated for residents with HIV disease are exempt from the 10-hour requirement as long as the facility can demonstrate each resident's involvement in a structured volunteer program that provides the required range of activities;
- (3) Preparing a monthly calendar of planned group activities which is to be in easily readable, large print, posted in a prominent location on the first day of each month, and updated when there are any changes;
- (4) Involving community resources, such as recreational, volunteer, religious, aging and developmentally disabled-associated agencies, to enhance the activities available to residents. The coordinator may use the home's aides in carrying out some activities with residents; and
- (5) Evaluating and documenting the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program.

(d) A variety of group and individual activities shall be provided. The program is to include, at least, the following types of activities:

- (1) Social and Recreational Activities:
 - (A) Opportunity shall be available for both individual and group social and recreational activities sufficiently diverse to accommodate the residents' varied interests and capabilities. These activities emphasize increasing self-confidence and stimulating interest and friendships;
 - (B) Individual activity includes one to one interactions in mutually enjoyable activity, such as buddy

walks, card playing and horseshoes as well as activity by oneself, such as bird watching, nature walks, and card playing;

- (C) Each resident shall have the opportunity to participate in at least one planned group social or recreational activity weekly. A group activity is one which involves a number of residents in physical and mental interaction. Each resident shall be encouraged to participate in an activity which best matches his physical, mental and emotional capability. Such activities may include group singing, dancing, bingo, and exercise classes;
- (D) Each resident shall have the opportunity to participate in at least one outing every other month. A resident interested in involving himself in the community more frequently shall be encouraged and helped to do so. The coordinator is to contact volunteers and residents' families to assist in the effort to get residents involved in activities outside the home;
- (E) If a resident cannot participate actively in community events, arrangements shall be made so that the more active residents can still participate in such outings. If there is a question about a resident's ability to participate in an activity, the resident's physician shall be consulted to obtain a statement regarding the resident's capabilities; and
- (F) The activities planned and offered shall take into account possible cultural differences of the residents.

(2) Diversional and Intellectual Activities:

- (A) Opportunity for both individual and group diversional and intellectual activities sufficiently diverse to accommodate the residents' varied interests and capabilities shall be available. There shall be adequate supplies and supervision provided to enable each resident to participate;
- (B) Individual activities emphasize individual accomplishments, creative expression, increased knowledge and the learning of new skills. Such activities may include sewing, crafts, painting, reading, creative writing, and wood carving;
- (C) Each resident shall have the opportunity to participate in at least one planned group activity weekly that emphasizes group

accomplishment, creative expression, increased knowledge, and the learning of new skills. Such activities may include discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events, and spelling bees; and

(D) The activities planned and offered shall take into account possible cultural differences of the residents.

(3) Work-Type and Volunteer Service Activities: Each resident shall have the opportunity to participate in meaningful work-type and volunteer service activities in the home or in the community, but participation shall be on an entirely voluntary basis. Under no circumstances shall this activity be forced upon a resident. Residents shall not be assigned these tasks in place of staff. Examples of work-type and volunteer services activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing, making or repairing toys for children, telephone reassurance, and gardening.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0906 OTHER RESIDENT CARE AND SERVICES

The requirements in 10 NCAC 42C .2305 shall control for this Subchapter.

(a) Transportation. The administrator shall assure the provision of transportation for the residents to necessary resources and activities, including transportation to the nearest appropriate health facilities, social services agencies, shopping and recreational facilities, and religious activities of the resident's choice. The resident is not to be charged any additional fee for this service. Sources of transportation may include community resources, public systems, volunteer programs, family members as well as facility vehicles.

(b) Mail.

(1) Residents shall receive their mail promptly and it shall be unopened unless there is a written, witnessed request authorizing management staff to open and read mail to the resident. This request shall be recorded on Form DSS-1865, the Resident Register or the equivalent;

(2) Outgoing mail written by a resident shall not be censored; and

(3) Residents shall be encouraged and assisted, if necessary, to correspond by mail with close relatives and friends. Residents shall have access to writing materials, stationery and postage and, upon request, the home is to provide such items at cost. It is not the home's obligation to pay for these items.

(c) Laundry.

(1) Laundry services shall be provided to residents without any additional fee; and

(2) It is not the home's obligation to pay for a resident's personal dry cleaning. The resident's plans for personal care of clothing are to be indicated on Form DSS-1865, the Resident Register.

(d) Telephone.

(1) A telephone shall be available in a location providing privacy for residents to make and receive a reasonable number of calls of a reasonable length;

(2) A pay station telephone is not acceptable for local calls; and

(3) It is not the home's obligation to pay for a resident's toll calls.

(e) Personal Lockable Space.

(1) Personal lockable space shall be provided for each resident to secure his personal valuables. One key shall be provided free of charge to the resident. Additional keys are to be provided to residents at cost upon request. It is not the home's obligation to pay for additional keys; and

(2) While a resident may elect not to use lockable space, it shall still be available in the home since the resident may change his mind. This space shall be accessible only to the resident and the administrator or supervisor-in-charge. The administrator or supervisor-in-charge shall determine at admission whether the resident desires lockable space, but the resident may change his mind at any time.

(f) Visiting.

(1) Visiting in the home and community at reasonable hours shall be encouraged and arranged through the mutual prior understanding of the residents and administrator;

(2) There shall be at least 10 hours each day for visitation in the home by persons from the community. If a home has established visiting hours or any restrictions on visitation, information about the hours and any restrictions shall be included in the house rules given to each resident at the time of admission and posted conspicuously in the home;

(3) A signout register shall be maintained for planned visiting and other scheduled absences which indicates the resident's departure time, expected time of return and the name and telephone number of the responsible party; and

(4) If the whereabouts of a resident are unknown and there is reason to be concerned about his safety, the person in charge in the home shall immediately notify the resident's responsible person, the appropriate law enforcement agency and the county department of social services.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .0908 COOPERATION WITH CASE MANAGERS

~~10 NCAC 42C .3704 shall control for this Subchapter. The administrator shall cooperate with and assure the cooperation of facility staff with case managers in their provision of case management services to the appropriate residents.~~

Authority G.S. 131D-2; 131D-4.3; 143B-153; 143B-165; S.L. 2002-0160.

SECTION .1200 - POLICIES, RECORDS AND REPORTS

10A NCAC 13F .1202 DISPOSAL OF RESIDENT RECORDS

~~The rules stated in 10 NCAC 42C .3102 shall control for this Subchapter.~~

- ~~(a) All records may be purged of material more than three years old unless the home has been asked by the monitoring or licensing agency to keep it for a longer period.~~
- ~~(b) After a resident has left the home or died, his records shall be put in order and filed in a safe place in the home for a period of three years and then may be destroyed.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .1203 REPORT OF ADMISSIONS AND DISCHARGES

~~The rules stated in 10 NCAC 42C .3103 shall control for this Subchapter.~~

~~When there is an admission or discharge of a resident, the administrator or supervisor-in-charge shall notify the county department of social services by the fifth day of the month following admission or discharge. Notification shall be made by submitting a form for reporting admissions and discharges. A form does not need to be submitted if there have not been any admissions or discharges.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .1204 POPULATION REPORT

~~The administrator or supervisor-in-charge shall submit by January 31 of each year an annual population report for the previous calendar year to the county department of social services. If the home closes during the year, the administrator or supervisor-in-charge shall report for the previous calendar year-to-date of closing.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13F .1206 ADVERTISING

~~The rules stated in 10 NCAC 42C .3200 regarding advertising shall control for this Subchapter:~~

~~The administrator may use acceptable methods of advertising provided:~~

- ~~(1) The name used is as it appears on the license;~~
- ~~(2) Only the services and accommodations for which the home is licensed are used; and~~
- ~~(3) The home is listed under proper classification in telephone books, newspapers or magazines.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

SUBCHAPTER 13G - LICENSING OF FAMILY CARE HOMES

SECTION .0200 – LICENSING

10A NCAC 13G .0204 APPLICATION TO LICENSE AN EXISTING BUILDING

(a) An application for a license to operate a family care home for adults in an existing building where no alterations are necessary shall be made at the county department of social services.

~~(b) A designated social worker will discuss the county's need for homes, the applicant's interest, qualifications, and plan of operation, and make a study of the administrator and home.~~

~~(c)~~(b) The following forms and reports shall be submitted through the county department of social services to the state Division of Facility Services:

- (1) ~~the~~ Initial License Application;
- ~~(2) Form DSS 1861 (Recommendation for License);~~
- ~~(3) Form DSS 1864 (Request for Medical Information);~~
- ~~(4)~~(2) a photograph of each side of ~~an~~ the existing structure and one set of schematic floor plans or blueprints of the building showing the floor plan; type of construction; location, size and height of windows; location and type of heating system; the use of basement and attic; location of doors and closets; and other requested details;
- ~~(5)~~(3) ~~Form DSS 6191 or DSS 1451 (the Fire and Building Safety Inspection Report Report)~~ to be submitted with completion of construction or renovation; ~~and~~
- ~~(6)~~(4) ~~Form DHS 2094 (the Sanitation Report Report)~~ or a permit to begin operation from the sanitary division of the county health department.

~~(d)~~(c) If during the study of the administrator and the home it does not appear that qualifications of the administrator or requirements for the home can be met, the county department of social services ~~will~~ shall so inform the applicant, indicating in writing the reason, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application ~~will~~ shall be completed and submitted to the Division of Facility Services for consideration.

~~(e)~~(d) The Division of Facility Services ~~will~~ shall notify the applicant and the county department of social services of approval or disapproval of the materials outlined in Subparagraph (c)(4) of this Rule and of any required changes.

~~(f)~~(e) Following review of application, references and all forms, a pre-licensing visit ~~will~~ shall be made by a consultant of the state Division of Facility Services.

~~(g)~~(f) The consultant ~~will~~ shall report his findings and recommendations to the Division of Facility Services which shall promptly notify, in writing, the applicant and the county department of social services of the action taken.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0205 APPLICATION TO LICENSE A NEWLY CONSTRUCTED OR RENOVATED BUILDING

- (a) An application for a license to operate a home which is to be constructed, added to or renovated must be made at the county department of social services where the home is to be located.
- (b) For information on the forms and reports to be submitted by the county department of social services to the Division of Facility Services, see Rule ~~3301(e)~~ .0204(b) of this Subchapter. All of these forms and reports apply to a home which is to be constructed, added to or renovated, including one set of schematic floor plans or blueprints, and photographs of each side of the building for renovations or additions.
- (c) If ~~during the study of the administrator and the home~~ it does not appear that ~~qualifications of the administrator or the licensure requirements~~ for the home can be met, the county department of social services will so inform the applicant, indicating in writing the reason, and give the applicant an opportunity to withdraw the application. Upon the applicant's request, the application will be completed and submitted to the Division of Facility Services for consideration.
- (d) Upon receipt of copies of approval letters from the Department of Insurance and the Division of Environmental Health in the North Carolina Department of Environment, ~~Health~~, and Natural Resources, indicating the applicant's plans are in full compliance with the applicable requirements of the North Carolina State Building Code and the ~~sanitary-sanitation~~ requirements of the Division of Environmental Health, the Division of Facility Services will make the final determination as to whether the rules of this Subchapter have been met and, if so, will give written approval and authorization to begin construction.
- (e) Any changes made during construction shall require the approval of the Division of Facility Services to assure that licensing requirements are maintained.
- (f) A pre-licensing visit and subsequent recommendation will be made by a program consultant, and in some cases a construction consultant, of the Division of Facility Services, in conjunction with the adult homes specialist of the county department of social services.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0207 CHANGE OF LICENSEE

When a ~~currently licensed administrator~~ licensee wishes to sell or lease the family care home business, the following procedure is required:

- (1) The ~~administrator must~~ licensee shall notify the county department of social services that a change is desired. When there is a plan for a change of ~~administrator~~ licensee and another person applies to operate the home immediately, the ~~administrator must~~ licensee shall notify the county department and the residents or their responsible persons. It is the responsibility of the county department to talk with the residents, giving them the opportunity to make other plans if they so desire.

- ~~(2)~~ — The applicant must meet the qualifications for administrator as specified in Rule .2001 of this Subchapter.
- ~~(3)~~(2) The county department of social services will submit all forms and reports specified in Rule ~~3301(e)~~ .0204 (b) of this Subchapter to the Division of Facility Services.
- ~~(4)~~(3) The Division of Facility Services will review the records of the facility and, if necessary, visit the home.
- ~~(5)~~(4) The ~~administrator~~ licensee and prospective ~~applicant~~ licensee will be advised by the Division of Facility Services of any changes which must be made to the building before licensing to a new licensee can be recommended.
- ~~(6)~~(5) Frame or brick veneer buildings over one story in height with resident services and accommodations on the second floor will not be considered for re-licensure.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0211 CLOSING OF HOME

- ~~(a) When there is a planned change of administrator and the home is to continue operating without interruption, the administrator must notify the county department of social services and the residents or their responsible persons. It is the responsibility of the county department of social services to discuss the change with the residents and offer assistance to any residents who wish to leave the home.~~
- ~~(b) If the home~~ a licensee plans to terminate it's the license close a home, the administrator licensee must shall provide written notification of the planned closing at least 30 days prior notice to the Division of Facility Services, the county department of social services and the residents or their responsible persons. persons at least 30 days prior to the planned closing. Written notification shall include reason for closing, date of closing and plans made for the move of the residents.
- ~~(c) If the home's license is revoked or terminated, the county department of social services will notify the residents and provide them with assistance in moving to licensed homes or other living arrangements.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

SECTION .0300 - THE BUILDING

10A NCAC 13G .0302 CONSTRUCTION

- (a) The home ~~must~~ shall meet applicable requirements of ~~Volume I and I-B~~ of the North Carolina State Building Code in force at the time of initial licensure.
- (b) The home ~~must~~ shall be one story in height, or two stories in height and meet the following requirements:
 - (1) Each floor ~~must~~ shall be less than 1800 square feet in area;
 - (2) Aged or disabled persons are not to be housed on the second floor;
 - (3) Required resident facilities are not to be located on the second floor;

- (4) A complete fire alarm system with pull stations on each floor and sounding devices which are audible throughout the building must shall be provided. The fire alarm system must shall be able to transmit an automatic signal to the local fire department where possible; and
 - (5) Interconnected U.L. approved products of combustion detectors directly wired to the house current must shall be installed on each floor.
- (c) The basement is not to be used for residents' storage or sleeping.
- (d) The attic is not to be used for storage or sleeping.
- (e) The ceiling must shall be at least seven and one-half feet from the floor.
- (f) In facilities licensed on or after April 1, 1984, all required resident areas must shall be on the same floor level. Steps between levels will not be permitted.
- (g) The door width must shall be a minimum of two feet and six inches in the kitchen, dining room, living rooms, bedrooms and bathrooms.
- (h) The building must shall meet sanitary requirements as determined by the North Carolina Department of Environment, Health, and Natural Resources; Division of Environmental Health. ~~Health Services.~~
- (i) All windows must shall be maintained operable.
- (j) The home shall have current sanitation and fire and building safety inspection reports which shall be maintained in the home and available for review.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

SECTION .0400 - STAFF QUALIFICATIONS

10A NCAC 13G .0405 TEST FOR TUBERCULOSIS

- ~~(a) The administrator shall be tested for tuberculosis disease within 90 days before employment and annually thereafter. There shall be documentation on file in the home that the administrator is free of tuberculosis disease that poses a direct threat to the health or safety of others.~~
- ~~(b)(a) Upon employment or living in the facility, the administrator, All all other staff and any live-in non-residents shall be tested for tuberculosis disease within 90 days before or seven days after employment or living in the home, and annually thereafter, in compliance with control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of Health and Human Services. Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, NC 27699-1902. There shall be documentation on file in the home that each person is free of tuberculosis disease that poses a direct threat to the health or safety of others.~~
- ~~(b) There shall be documentation on file in the home that the administrator, all other staff and any live-in non-residents are free of tuberculosis disease that poses a direct threat to the health or safety of others.~~
- ~~(c) Tests for tuberculosis disease shall comply with the control measures adopted by the Commission for Health Services as specified in 15A NCAC 19A .0205 including subsequent~~

~~amendments and editions. Copies of the rule are available at no charge by contacting the Department of Environment, Health, and Natural Resources Tuberculosis Control Branch, Post Office Box 27687, Raleigh, North Carolina 27611-7687.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0406 OTHER STAFF QUALIFICATIONS

- ~~(a) In addition to the personnel requirements set forth in Rules 0401, .0402, and .0404 of this Subchapter, additional competent staff shall be employed, as needed, to assure good housekeeping, supervision and personal care of the residents.~~
- ~~(b) In homes where there are minor children, aged or infirm relatives of the administrator or other management staff residing, the number of extra staff shall be determined by the capacity for which the home is licensed plus the minors and relatives who require care and supervision.~~
- ~~(c) The Division of Facility Services shall make the final determination of the need for additional staff, based on the home's licensed capacity; the number of live in minors and relatives requiring care; the condition, needs and ambulation capacity of the residents; and the layout of the building.~~
- (a) Each staff person shall:
- ~~(d)(1) Each staff member shall have a well-defined job description that reflects actual duties and responsibilities, responsibilities and is signed by the administrator and the employee, employee;~~
 - ~~(e)(2) Each staff member shall be able to apply all of the home's accident, fire safety and emergency procedures for the protection of the residents, residents;~~
 - ~~(f)(3) Each staff member authorized by the administrator to have access to confidential resident information shall be informed of the confidential nature of the resident information and shall protect and preserve such information from unauthorized use and disclosure, disclosure;~~
Note: G.S. 131D-2(b)(4), G.S. 131D-21(6), and G.S. 131D-21.1 govern the disclosure of such information, information;
 - ~~(g)(4) Each staff member shall encourage and assist the residents in not hinder or interfere with the exercise of the rights guaranteed under the Adult Care Home Residents' Bill of Rights, Declaration of Residents' Rights in G.S. 131D-21; No staff member shall hinder or interfere with the proper performance of a duty of lawfully appointed Adult Care Home Community Advisory Committee.~~
 - ~~(h)(5) Each staff member left alone with the residents shall be 18 years or older, older;~~
 - ~~(6) have no substantiated findings listed on the North Carolina Health Care Personnel Registry according to G.S. 131E-256;~~
 - ~~(7) have documented annual immunization against influenza virus according to G.S. 131D-9, except as documented otherwise according to exceptions in this law;~~

(8) have a criminal background check in accordance with G.S. 114-19.10 and G.S. 131D-40; and

(9) maintain a valid driver's license if responsible for transportation of residents.

~~(i) By January 1, 2001, each facility shall have at least one staff person on the premises at all times who has successfully completed within the last 24 months a course on cardiopulmonary resuscitation (CPR) and choking management, including Heimlich maneuver, provided by the American Heart Association, the American Red Cross or a trainer with documented certification as a trainer in these procedures unless the only staff person on-site has been deemed physically incapable of performing these procedures by a licensed physician. For the purpose of this Rule, successfully completed means demonstrating competency, as evaluated by the instructor, in performing the Heimlich maneuver and cardiopulmonary resuscitation. Documentation of successful completion of the course shall be on file and available for review in the facility. The facility shall not have a policy prohibiting staff from administering CPR to residents except those residents with physician orders for no resuscitation or no CPR.~~

~~(j) Staff who transport residents shall maintain a valid driver's license.~~

~~(k)(b) If licensed practical nurses are employed by the facility and practicing in their licensed capacity as governed by their practice act and occupational licensing laws, there shall be continuous availability of a registered nurse consistent with Rules 21 NCAC 36 .0224(I) and 21 NCAC 36 .0225.~~

Note: The practice of licensed practical nurses is governed by their occupational licensing laws.

Authority G.S. 131D-2; 131D-4.5; 143B-153; 143B-165; S.L. 1999-0334; 2002-0160.

SECTION .0500 - STAFF ORIENTATION, TRAINING, COMPETENCY AND CONTINUING EDUCATION

10A NCAC 13G .0504 COMPETENCY VALIDATION FOR LICENSED HEALTH PROFESSIONAL SUPPORT TASKS

(a) The facility shall assure that non-licensed personnel and licensed personnel not practicing in their licensed capacity as governed by their practice act and occupational licensing laws are competency validated by return demonstration for any personal care task specified in Paragraphs (a)(1)-(a)(28) of Rule .0903 of this Subchapter prior to staff performing the task and that their ongoing competency is assured through facility staff oversight and supervision.

(b) Competency validation shall be performed by the following licensed health professionals:

(1) A registered nurse shall validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(1)-(a)(28) of Rule .0903 of this Subchapter.

(2) In lieu of a registered nurse, a respiratory care practitioner licensed under G.S. 90, Article 38, may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(6), (11), (16), (18), (19) and (21) of Rule .0903 of this Subchapter.

(3) In lieu of a registered nurse, a registered pharmacist may validate the competency of staff who perform the personal care task specified in Subparagraph (a)(8) of Rule .0903 of this Subchapter

(4) In lieu of a registered nurse, an occupational therapist or physical therapist may validate the competency of staff who perform personal care tasks specified in Subparagraphs (a)(17) and (a)(22-27) of Rule .0903 of this Subchapter.

(c) Competency validation of staff, according to Paragraph (a) of this Rule, for the licensed health professional support tasks specified in Paragraph (a) of Rule .0903 of this Subchapter and the performance of these tasks is limited exclusively to these tasks.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0505 TRAINING ON CARE OF DIABETIC RESIDENTS

The facility shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows:

(1) Training shall be provided by a registered nurse, registered pharmacist or prescribing practitioner; and

- (2) Training shall include at least the following:
- (a) basic facts about diabetes and care involved in the management of diabetes;
 - (b) insulin action;
 - (c) insulin storage;
 - (d) mixing, measuring and injection techniques for insulin administration;
 - (e) treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;
 - (f) blood glucose monitoring;
 - (g) universal precautions;
 - (h) appropriate administration times; and
 - (i) sliding scale insulin administration.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0506 TRAINING ON PHYSICAL RESTRAINTS

(a) The facility shall assure that all staff responsible for caring for residents with medical symptoms that warrant restraints are trained on the use of alternatives to physical restraint use and on the care of residents who are physically restrained.

(b) Training shall be provided by a registered nurse and shall include the following:

- (1) alternatives to physical restraints;
- (2) types of physical restraints;
- (3) medical symptoms that warrant physical restraint;
- (4) negative outcomes from using physical restraints;
- (5) correct application of physical restraints;

- (6) monitoring and caring for residents who are restrained; and
- (7) the process of reducing restraint time by using alternatives.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0507 TRAINING ON CPR

Each facility shall have at least one staff person on the premises at all times who has completed within the last 24 months a course on cardio-pulmonary resuscitation and choking management, including the Heimlich maneuver, provided by an organization that has a nationally recognized course or program in cardio-pulmonary resuscitation, including the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute and Medic First Aid, or by a trainer with documented certification as a trainer on these procedures from one of these organizations.

Authority 131D-2; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0508 ASSESSMENT TRAINING

The person or persons designated by the administrator to perform resident assessments as required by Rule .0801 of this Subchapter shall successfully complete training according to an instruction manual on resident assessment established by the Department before performing the required assessments. Registered nurses are exempt from the assessment training. The instruction manual on resident assessment is available on the internet website, <http://facility-services.state.nc.us/gcpage.htm>, or it is available at the cost of printing and mailing from the Division of Facility Services, Adult Care Licensure Section, 2708 Mail Service Center, Raleigh, NC 27699-2708.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L.2002-0160.

10A NCAC 13G .0512 DOCUMENTATION OF TRAINING AND COMPETENCY VALIDATION

The facility shall maintain documentation of the training and competency validation of staff required by the rules of this section in the facility and available for review.

Authority 131D-2; 143B-165; S.L. 2002-0160.

SECTION .0700 - ADMISSION AND DISCHARGE

10A NCAC 13G .0702 TUBERCULOSIS TEST AND MEDICAL EXAMINATION

- (a) Upon admission to the home each ~~Each~~ resident shall ~~have a medical examination and~~ be tested for tuberculosis disease before admission and annually thereafter. Tests for tuberculosis disease shall comply in compliance with the control measures adopted by the Commission for Health Services as specified in 10A NCAC 41A .0205 including subsequent amendments and editions. Copies of the rule are available at no charge by contacting the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services, Tuberculosis Control Branch Program, 1902 Mail Service Center, Post Office Box 27687, Raleigh, North Carolina 27611-7687/27699-1902.
- (b) Each resident shall have a medical examination prior to admission to the home and annually thereafter.

~~(b)~~(c) The results of the complete examination are to be entered on ~~Form the~~ FL-2 or MR-2, MR-2 which shall comply with the following:

- (1) The examining date recorded on the FL-2 or MR-2 ~~must~~ shall be no more than 90 days prior to the person's admission ~~or readmission~~ to the home.
- (2) The FL-2 or MR-2 ~~must~~ shall be in the facility before admission ~~or readmission~~ or accompany the resident upon admission ~~or readmission~~ and be reviewed by the administrator or supervisor-in-charge before admission ~~or readmission~~. ~~except for emergency admissions.~~
- (3) In the case of an emergency admission, the medical examination and completion of the FL-2 or MR-2 shall be within 72 hours of admission as long as current medication and treatment orders are available upon admission or there has been an emergency medical evaluation, including any orders for medications and treatments, upon admission.
- (4) If the information on the ~~form~~ FL-2 or MR-2 is not clear or is insufficient, the administrator or supervisor-in-charge ~~must~~ shall contact the physician for clarification in order to determine if the services of the facility can meet the individual's needs.
- (5) The completed ~~Form~~ FL-2 or MR-2 ~~must~~ shall be filed in the resident's record in the home.
- (6) If a resident has been hospitalized, the facility shall have a completed FL-2 or MR-2 or a transfer form or discharge summary with signed prescribing practitioner orders upon the resident's return to the facility from the hospital.

(d) Each resident shall be immunized against pneumococcal disease and annually against influenza virus according to G.S. 131D-9, except as otherwise indicated in this law.

~~(e)~~(e) The ~~administrator-home~~ ~~must~~ shall make arrangements for any resident, who has been an inpatient of a psychiatric facility within 12 months before entering the home and who does not have a current plan for psychiatric care, to be examined by a local physician or a physician in a mental health center within 30 days after admission and to have a plan for psychiatric follow-up care when indicated, indicated, using ~~Form DSS 1867 or an equivalent record.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

10A NCAC 13G .0705 DISCHARGE OF RESIDENTS

(a) A facility shall not initiate and carry out the discharge or transfer of residents except under conditions specified in this rule. Discharge or transfer involves termination of residency in a facility and taking action to have the resident moved from the facility. The discharge or transfer of a resident by a facility shall meet one of the following conditions:

- (1) ~~the discharge or transfer is necessary for the resident's welfare because the resident's needs cannot be met in the facility;~~

- ~~(2) the discharge or transfer is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;~~
- ~~(3) the resident's condition is such that he is a danger to himself or poses a direct threat to his own health or safety;~~
- ~~(4) the safety of individuals in the facility would otherwise be endangered;~~
- ~~(5) the health of individuals in the facility would otherwise be endangered;~~
- ~~(6) the welfare of individuals in the facility would otherwise be endangered~~
- ~~(7) the resident or responsible person has failed to pay the costs of services and accommodations according to the resident contract;~~
- ~~(8) the transfer or discharge is mandated under state law; or~~
- ~~(9) the facility ceases to operate.~~

~~(3) (b) If a facility discharges or transfers a resident, the reason for discharge or transfer shall be documented in the resident's record. Documentation shall include documentation by the resident's physician if discharge or transfer is necessary under conditions specified in Paragraph (a), Parts (1) and (2) of this Rule or a physician if discharge or transfer is necessary under the condition specified in Paragraph (a), Parts (3) and (5) of this Rule.~~

~~(c) At least thirty days before discharging or transferring a resident, the following steps shall be taken~~

- ~~(1) The facility shall notify the resident verbally and in writing and the responsible person or contact person in writing of the facility's decision to discharge or transfer the resident. The Adult Care Home Notice of Transfer/Discharge form shall serve as the written notice of discharge or transfer and be completed by the facility and given to the resident on the same day it is dated.~~
- ~~(2) A copy of this notice shall be mailed or sent by facsimile to the responsible person or contact person on the same day it is dated. Failure to use and complete this specific form shall invalidate the notice of discharge or transfer. This form may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699 2505. Failure to use the latest version of this form does not invalidate the transfer or discharge unless the facility has been previously notified of a change in the form and been provided a copy of the latest form.~~
- ~~(3) The facility shall notify the resident verbally and in writing and the responsible person or contact person in writing of the resident's right to appeal the facility's action of discharge or transfer to the Division of Medical Assistance. The Adult Care Home Hearing Request Form shall be given to the resident and a copy mailed or sent by facsimile to the responsible person or contact person simultaneously with the Adult Care Home Notice of~~

~~Transfer/Discharge form as written notice of the right to appeal the facility's action. Failure to include this specific form with the Adult Care Home Notice of Transfer/Discharge form shall invalidate the notice of discharge or transfer. The Hearing Request Form may be obtained at no cost from the Division of Medical Assistance, P.O. Box 29529, Raleigh, NC 27626 0529. Failure to use the latest version of the Hearing Request Form does not invalidate the request for a hearing unless the facility has been previously notified of a change in the form and been provided a copy of the latest form.~~

- ~~(3) In cases where the resident has been adjudicated incompetent, the Adult Care Home Notice of Transfer/Discharge form and the Adult Care Home Hearing Request Form shall be mailed or sent by facsimile to the resident's legal representative on the same day they are dated.~~

- ~~(4) The facility shall maintain a copy of the completed Adult Care Home Notice of Transfer/Discharge form in the resident's record.~~

~~(d) Exceptions to the 30-day notice of discharge or transfer required in Paragraph (c) of this Rule are cases in which: a resident is being discharged under conditions specified in Parts (1), (3), (4) and (5) of Paragraph (a) of this Rule.~~

~~(e) The facility shall assist residents in the discharge or transfer process to ensure safe and orderly discharge or transfer from the facility.~~

~~(f) The resident or the resident's responsible person may initiate an appeal of a facility's intent to discharge or transfer the resident by submitting a written request for a hearing to the Hearing Unit which is the Chief Hearing Officer and the Chief Hearing Officer's staff in the Division of Medical Assistance of the Department of Health and Human Services. The request for a hearing shall be submitted by mail, facsimile or hand delivery and must be received by the Hearing Unit within 11 calendar days from the date of the facility's notice of discharge or transfer. If the eleventh day falls on a Saturday, Sunday or legal holiday, the period during which an appeal may be requested shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. Except in cases specified in Paragraph (d) of this Rule, the resident shall not be discharged or transferred before the final decision resulting from the appeal has been rendered.~~

- ~~(g) If an appeal hearing is requested, the following shall apply:

 - ~~(1) Upon timely receipt of a request for a hearing according to Paragraph (f) of this Rule, the Hearing Unit shall promptly notify the facility in writing of the request.~~
 - ~~(2) The facility, the resident and the resident's responsible person or contact person shall be notified by the Hearing Unit of the date, time and place of the hearing. The hearing shall be held within 30 calendar days of the Hearing Unit's receipt of a request for a hearing. If the 30th day falls on a Saturday, Sunday or legal holiday, the period during which a hearing~~~~

may be held shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. If the hearing is to be conducted in person, it shall be held in Raleigh, North Carolina. The hearing may also be conducted by telephone as indicated on the Hearing Request Form.

- (3) ~~Each party to an appeal hearing shall provide to all other parties to the hearing and to the Hearing Unit copies of all documents and records that the party intends to use at the hearing at least five working days prior to the scheduled hearing.~~
- (4) ~~The Hearing Officer, who is the person designated to preside over hearings between residents and adult care home providers regarding discharges and transfers, may:~~
 - (A) ~~grant continuances;~~
 - (B) ~~dismiss a request for a hearing if the resident or the resident's responsible person or whoever the resident has designated to present him fails to appear at a scheduled hearing; or~~
 - (C) ~~proceed to conduct a scheduled hearing if a facility representative fails to appear at a scheduled hearing.~~
- (5) ~~The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall not apply in any hearings held by a Division hearing officer unless another specific statute or rule provides otherwise. Division hearings are not hearings within the meaning of G.S. 150B and shall not be governed by the provisions of that Chapter unless otherwise stated in these rules. Parties may be represented by counsel or other representative at the hearing.~~
- (6) ~~The Hearing Officer's final decision shall uphold or reverse the facility's decision. Copies of the final decision shall be mailed by certified mail to the facility and the resident and the resident's responsible person.~~

~~(h) If a discharge or transfer is initiated by the resident or responsible person, the administrator may require up to a 14 day written notice from the resident or responsible person prior to the resident leaving the facility. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the facility's resident contract or house rules provided to the resident or responsible person according to Rule .2405 of this Subchapter.~~

~~(a) The discharge of a resident initiated by the facility shall be according to conditions and procedures specified in Paragraphs (a) through (g) of this Rule. The discharge of a resident initiated by the facility involves the termination of residency by the facility resulting in the resident's move to another location and~~

the facility not holding the bed for the resident based on the facility's bed hold policy.

Note: The discharge requirements in this Rule do not apply when a resident is transferred to an acute inpatient facility for mental or physical health evaluation or treatment and the adult care facility's bed hold policy applies based on the expected return of the resident. If the facility decides to discharge a resident who has been transferred to an acute inpatient facility and there has been no physician-documented level of care change for the resident, the discharge requirements in this Rule would apply.

(b) The discharge of a resident shall be based on one of the following reasons:

- (1) the discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (2) the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility as documented by the resident's physician, physician assistant or nurse practitioner;
- (3) the safety of other individuals in the facility is endangered;
- (4) the health of other individuals in the facility is endangered as documented by a physician, physician assistant or nurse practitioner;
- (5) failure to pay the costs of services and accommodations by the payment due date according to the resident contract after receiving written notice of warning of discharge for failure to pay; or
- (6) the discharge is mandated under G.S. 131D-2(a)(1).

(c) The notices of discharge and appeal rights as required in Paragraph (e) of this Rule shall be made by the facility at least 30 days before the resident is discharged except that notices may be made as soon as practicable when:

- (1) the resident's health or safety is endangered and the resident's needs cannot be met in the facility under Paragraph (b)(1) of this Rule; or
- (2) reasons under Paragraphs (b)(2), (b)(3), (b)(4) and (b)(6) of this Rule exist.

(d) The reason for discharge shall be documented in the resident's record. Documentation shall include one or more of the following as applicable to the reasons under Paragraph (b) of this Rule:

- (1) documentation by physician, physician assistant or nurse practitioner as required in Paragraph (b) of this Rule;
- (2) the condition or circumstance that endangers the health or safety of the resident being discharged or endangers the health or safety of individuals in the facility, and the facility's action taken to address the problem prior to pursuing discharge of the resident;
- (3) written notices of warning of discharge for failure to pay the costs of services and accommodations; or

- (4) the specific health need or condition of the resident that the facility determined could not be met in the facility pursuant to G.S. 131D-2(a)(1)(4) and as disclosed in the resident contract signed upon the resident's admission to the facility.
- (e) The facility shall assure the following requirements for written notice are met before discharging a resident:
- (1) The Adult Care Home Notice of Discharge with the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, to the resident on the same day the Adult Care Home Notice of Discharge is dated. These forms may be obtained at no cost from the Division of Medical Assistance, 2505 Mail Service Center, Raleigh, NC 27699-2505;
 - (2) A copy of the Adult Care Home Notice of Discharge with a copy of the Adult Care Home Hearing Request Form shall be hand delivered, with receipt requested, or sent by certified mail to the resident's responsible person or legal representative on the same day the Adult Care Home Notice of Discharge is dated;
 - (3) Failure to use and simultaneously provide the specific forms according to Paragraphs (e)(1) and (e)(2) of this Rule shall invalidate the discharge. Failure to use the latest version of these forms shall not invalidate the discharge unless the facility has been previously notified of a change in the forms and been provided a copy of the latest forms by the Department of Health and Human Services; and
 - (4) A copy of the completed Adult Care Home Notice of Discharge, the Adult Care Home Hearing Request Form as completed by the facility prior to giving to the resident and a copy of the receipt of hand delivery or the notification of certified mail delivery shall be maintained in the resident's record.
- (f) The facility shall provide assistance in preparing for a safe and orderly discharge as evidenced by:
- (1) notifying staff in the county department of social services responsible for placement services;
 - (2) explaining to the resident and responsible person or legal representative why the discharge is necessary;
 - (3) informing the resident and responsible person or legal representative about an appropriate discharge destination; and
 - (4) offering the following material to the caregiver with whom the resident is to be placed and providing this material as requested prior to or upon discharge of the resident:
 - (A) a copy of the resident's most current FL-2;
 - (B) a copy of the resident's most current assessment and care plan;
 - (C) a copy of the resident's current physician orders;

- (D) a list of the resident's current medications;
 - (E) the resident's current medications; and
 - (F) a record of the resident's vaccinations and TB screening.
- (g) If an appeal hearing is requested:
- (1) the facility shall provide to the resident or legal representative or the resident and the responsible person, and the Hearing Unit copies of all documents and records that the facility intends to use at the hearing at least five working days prior to the scheduled hearing; and
 - (2) the facility shall not discharge the resident before the final decision resulting from the appeal has been rendered, except in those cases of discharge specified in Paragraph (c) of this Rule.
- (h) If a discharge is initiated by the resident or responsible person, the administrator may require up to a 14-day written notice from the resident or responsible person prior to the resident leaving the facility. Exceptions to the required notice are cases in which a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the facility. The facility's requirement for a notice from the resident or responsible person shall be established in the resident contract or the house rules provided to the resident or responsible person upon admission.

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 99-0334; 2002-0160.

SECTION .0800 - RESIDENT ASSESSMENT AND CARE PLAN

10A NCAC 13G .0801 RESIDENT ASSESSMENT

- (a) ~~The facility shall assure that an admission-initial assessment of each resident is completed within 72 hours of admitting the resident using an assessment instrument approved by the Department, admission using the Resident Register.~~
- (b) ~~The facility shall assure an assessment of each resident is completed within 30 days following admission and at least annually thereafter using an assessment instrument established by the Department or an instrument approved by the Department based on it containing at least the same information as required on the established instrument. Effective January 1, 2002, in addition to the admission assessment within 72 hours, an evaluation of each resident shall be completed within 30 calendar days from the date of admission and annually thereafter using the Resident Assessment Instrument as approved by the Department. The evaluation within 30 calendar days of admission and annually thereafter The assessment to be completed within 30 days following admission and annually thereafter is a functional assessment to determine a resident's level of functioning to include routines, preferences, needs, mood and psychosocial well-being, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident which are bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting and eating. The~~

evaluation ~~assessment~~ within 30 calendar days of admission and annually thereafter shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

~~(b)(c)~~ The facility shall assure ~~a reassessment~~ an assessment of a resident is completed within 10 days of following a significant change in the resident's condition using the assessment instrument required in Paragraph (b) of this Rule. ~~to be completed within 72 hours of resident admission prior to January 1, 2002 and the Resident Assessment Instrument thereafter.~~ For the purposes of this Subchapter, significant change in the resident's condition is defined as follows:

- (1) Significant change is one or more of the following:
 - (A) deterioration in two or more activities of daily living;
 - (B) change in ability to walk or transfer;
 - (C) change in the ability to use one's hands to grasp small objects;
 - (D) deterioration in behavior or mood to the point where daily problems arise or relationships have become problematic;
 - (E) no response by the resident to the treatment for an identified problem;
 - (F) initial onset of unplanned weight loss or gain of five percent of body weight within a 30-day period or 10 percent weight loss or gain within a six-month period;
 - (G) threat to life such as stroke, heart condition, or metastatic cancer;
 - (H) emergence of a pressure ulcer at Stage II or higher;
 - (I) a new diagnosis of a condition likely to affect the resident's physical, mental, or psychosocial well-being over a prolonged period of time such as initial diagnosis of Alzheimer's disease or diabetes;
 - (J) improved behavior, mood or functional health status to the extent that the established plan of care no longer matches what is needed;
 - (K) new onset of impaired decision-making;
 - (L) continence to incontinence or indwelling catheter; or
 - (M) the resident's condition indicates there may be a need to use a restraint and there is no current restraint order for the resident.
- (2) Significant change is not any of the following:
 - (A) changes that suggest slight upward or downward movement in the resident's status;
 - (B) short-term changes that resolve with or without intervention;
 - (C) changes that arise from easily reversible causes;

- (D) a short-term acute illness or episodic event;
- (E) a well-established, predictive, cyclical pattern; or
- (F) steady improvement under the current course of care.

~~(e)(d)~~ If a resident experiences a significant change as defined in Paragraph ~~(b)(c)~~ of this Rule, the facility shall refer the resident to the resident's physician or other appropriate licensed health professional such as a mental health professional, nurse practitioner, physician assistant or registered nurse in a timely manner consistent with the resident's condition but no longer than 10 days from the significant change, and document the referral in the resident's record.

~~(d)(e)~~ The ~~assessment to be completed within 72 hours and the evaluation to be completed within 30 calendar days of admission and annually thereafter as required in Paragraph (a) of this Rule assessments and any reassessment as required in Paragraph (a) Paragraphs (b) and (c) of this Rule and any reassessment as required in Paragraph (b) of this Rule~~ shall be completed and signed by the ~~administrator or a person designated by the administrator to perform resident assessments. assessments or reassessments.~~

~~(e)~~ ~~The facility administrator or a person designated by the administrator to perform resident assessments and reassessments using the Resident Assessment Instrument shall successfully complete training provided by the Department on assessing residents before performing the required assessments or reassessments. using the Resident Assessment Instrument as required in Paragraph (a) of this Rule. Registered nurses are exempt from the assessment training. Documentation of assessment training shall be maintained in the facility and available for review.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

10A NCAC 13G .0802 RESIDENT CARE PLAN

(a) The facility shall assure a care plan is developed for each resident in conjunction with the ~~initial~~ resident assessment to be completed within 30 days following admission according to Rule .0801 of this Section and revised as needed based on annual assessments and any reassessments of the resident. For the purposes of this Subchapter, ~~the~~ The care plan is an individualized, written program of personal care for each resident.

(b) The care plan shall be revised as needed based on further assessments of the resident according to Rule .0801 of this Subchapter.

- ~~(b)(c)~~ The care plan shall include the following:
- (1) a statement of the care or service to be provided based on the assessment or reassessment; and
 - (2) frequency of the service provision.
- ~~(e)(d)~~ The assessor shall sign the care plan upon its completion.
~~(d)(e)~~ The facility shall assure that the resident's physician authorizes personal care services and certifies the following by signing and dating the care plan within 15 calendar days of completion of the assessment:
- (1) the resident is under the physician's care; and
 - (2) the resident has a medical diagnosis with associated physical or mental limitations that

justify the personal care services specified in the care plan.

Authority G.S. 131D-2; 131D-4.3; 131D-4.5; 143B-153; 143B-165; S.L. 99-0334; 2002-0160.

SECTION .0900 - RESIDENT CARE AND SERVICES

10A NCAC 13G .0902 HEALTH CARE

~~(a) The administrator is responsible for providing occasional or incidental medical care, such as providing therapeutic diets, rotating positions of residents confined to bed, and applying heat pads.~~

~~(b) The resident or his responsible person shall be allowed to choose a physician to attend to him.~~

~~(c) Immediate arrangements shall be made by the administrator with the resident or his responsible person for the resident to secure another physician when he cannot remain under the care of his own physician. The name, address and telephone number of the resident's physician shall be recorded on the Resident Register.~~

~~(d) If a resident is hospitalized, a completed FL-2 or patient transfer form shall be obtained before the resident can be readmitted to the facility.~~

~~(e) Between annual medical examinations there may be a need for a physician's care. The resident's health services record is to be used by the physician to report any drugs prescribed and any treatment given or recommended for minor illnesses.~~

~~(f) All contacts (office, home or telephone) with the resident's physician shall be recorded on the resident's health services record which is to be retained in the resident's record in the home. The physician's orders shall be included in the resident's health services record including telephone orders initialed by staff and signed by the physician within 15 days from the date the order is given.~~

~~(g) Effective January 1, 2001, the following restraint requirements shall apply. The use of physical restraints refers to the application of a physical or mechanical device attached to or adjacent to the resident's body that the resident cannot remove easily which restricts freedom of movement or normal access to one's body and includes bed rails when used to keep the resident from voluntarily getting out of bed as opposed to enhancing mobility of the resident while in bed. Residents shall be physically restrained only in accordance with the following:~~

- ~~(1) The facility shall prohibit the use of physical restraints for discipline or convenience and limit restraint use to circumstances in which the resident has medical symptoms that warrant the use of restraints. Medical symptoms may include, but are not limited to, the following: confusion with risk of falls; and risk of abusive or injurious behaviors to self or others.~~

- ~~(2) Alternatives to physical restraints that would provide safety to the resident and prevent a potential for decline in the resident's functioning shall be provided prior to restraining the resident and documented in the medical record. Alternatives may include, but are not limited to, the following: providing restorative care to enhance abilities to stand~~

safely and to walk, providing a device that monitors attempts to rise from chair or bed, placing the bed lower to the floor, providing frequent staff monitoring with periodic assistance in toileting and ambulation and offering fluids, providing activities, providing supportive devices such as wedge cushions, controlling pain and providing a calm relaxing environment with minimal noise and confusion.

- ~~(3) If alternatives to physical restraints have failed and the resident's medical symptoms warrant the use of physical restraints, the facility shall assure that the resident is restrained with the least restrictive restraint that would provide safety.~~

- ~~(4) When physical restraints are used, the facility shall engage in a systemic and gradual process towards reducing restraint time by using alternatives.~~

- ~~(5) The administrator shall assure the development and implementation of written policies and procedures in the use of alternatives to physical restraints and in the care of residents who are physically restrained.~~

~~(A) The administrator shall consult with a registered nurse in developing policies and procedures for alternatives to physical restraints and in the care of residents who are physically restrained.~~

~~(B) Policies and procedures for alternatives to physical restraints and the use of physical restraints shall comply with requirements of this section. Orientation of these policies and procedures shall be provided to staff responsible for the care of residents who are restrained or require alternatives to restraints. This orientation shall be provided as part of the training required prior to staff providing care to residents who are restrained or require alternatives to restraints.~~

- ~~(6) The administrator shall assure that each resident with medical symptoms that warrant the use of physical restraints is assessed and a care plan is developed. This assessment and care planning shall be completed prior to the resident being restrained; except in emergency situations. This assessment and care planning must meet any additional requirements in Section .0800 of this Subchapter.~~

~~(A) The assessment shall include consideration of the following:~~

- ~~(i) Medical symptoms that warrant the use of a physical restraint;~~
- ~~(ii) How the medical symptoms affect the resident;~~

- (iii) ~~When the medical symptoms were first observed;~~
- (iv) ~~How often the medical symptoms occur; and~~
- (v) ~~Alternatives that have been provided and the resident's response.~~
- (B) ~~The care plan shall be individualized and indicate specific care to be given to the resident. The care plan shall include consideration of the following:

 - (i) ~~Alternatives and how the alternatives will be used;~~
 - (ii) ~~The least restrictive type of physical restraint that would provide safety; and~~
 - (iii) ~~Care to be provided to the resident during the time the resident is restrained.~~~~
- (C) ~~The assessment and care planning shall be completed through a team process. The team must consist of, but is not limited to, the following: the supervisor or a personal care aide, a registered nurse and the resident's representative. If the resident's representative is not present, there must be documented evidence that the resident's representative was notified and declined an invitation to attend.~~
- (7) ~~The resident's right to participate in his or her care and to refuse treatment includes the right to accept or refuse restraints. For the resident to make an informed choice about the use of physical restraints, negative outcomes, benefits and alternatives to restraint use shall be explained to the resident. Potential negative outcomes include incontinence, decreased range of motion, decreased ability to ambulate, increased risk of pressure ulcers, symptoms of withdrawal or depression and reduced social contact. In the case of a resident who is incapable of making a decision, the resident's representative shall exercise this right based on the same information that would have been provided to the resident. However, the resident's representative cannot give permission to use restraints for the sake of discipline or staff convenience or when the restraint is not necessary to treat the resident's medical symptoms.~~
- (8) ~~The resident or the resident representative involvement in the restraint decision shall be documented in the resident's medical record. Documentation shall include the following:

 - (A) ~~The resident or the resident's representative shall sign and date a statement indicating they have been informed as required above.~~
 - (B) ~~The statement shall indicate the resident's or the resident's representative's decision in restraint use, either consent for or a desire not to use restraints.~~
 - (C) ~~The consent shall include the type of restraint to be used and the medical symptoms for use.~~~~
- (9) ~~When a physical restraint is warranted and consent has been given, a physician's order shall be written. The following requirements apply to the physician's order:

 - (A) ~~The use of physical restraints is allowed only with a written order from a licensed physician. If the order is obtained from a physician other than the resident's attending physician, the attending physician shall be notified of the order within seven days.~~
 - (B) ~~In emergency situations, the administrator or supervisor in charge shall make the determination relative to necessity for the type and duration of the physical restraint to use until a physician is contacted. Contact shall be made within 24 hours.~~
 - (C) ~~The physician shall specify in the restraint order the medical need for the physical restraint, the type to be used, the period of time it is to be used, and the time intervals it is to be checked and removed.~~
 - (D) ~~The current order for the physical restraint shall be on or attached to Form FL-2 or Form MR-2 (upon entering the home) or the Report of Health Services to Residents Form, or approved equivalent (for subsequent orders).~~
 - (E) ~~The physician ordering the physical restraint shall update the restraint order at a minimum of every three months.~~
 - (F) ~~If the resident's physician changes after admission to the home, the physician who is to attend the resident shall update and sign the existing restraint order.~~~~
- (10) ~~The physical restraint shall be applied correctly according to manufacturer's instructions and the physician's order.~~
- (11) ~~The resident shall be checked and released from the physical restraint and care provided as stated in the care plan; at least every 15 minutes for checks and at least every 2 hours for release.~~
- (12) ~~Alternatives shall be provided in an effort to reduce restraint time.~~

- (13) — All instances of physical restraint use shall be documented and shall include at least the following:
 - (A) — Alternatives to physical restraints that were provided and the resident's response;
 - (B) — Type of physical restraint that was used;
 - (C) — Medical symptoms warranting the use of the physical restraint;
 - (D) — Time and duration of the physical restraint;
 - (E) — Care that was provided to the resident during the restraint use; and
 - (F) — Behaviors of the resident during the restraint use.

(14) — Physical restraints shall be applied only by staff who have received training and who have been validated for competency by a registered nurse on the proper use of restraints. Training and competency validation on restraints shall occur before staff members apply restraints.

~~(h) The administrator shall have specific written instructions recorded as to what to do in case of sudden illness, accident, or death of a resident.~~

~~(i) There shall be an adequate supply of first aid supplies available in the home for immediate use.~~

~~(j) The administrator shall make arrangements with the resident, his responsible person, the county department of social services or other appropriate party for appropriate health care as needed to enable the resident to be in the best possible health condition.~~

(a) The facility shall provide care and services in accordance with the resident's care plan.

(b) The facility shall assure arrangements are made to enable the resident to be in the best possible health condition as evidenced by documentation of the following in the resident's record:

- (1) facility contacts with the resident's physician, physician service or other licensed health professional when illnesses or accidents occur and any other facility contacts with a physician or licensed health professional regarding resident care;
- (2) all visits of the resident to or from the resident's physician, physician service or other licensed health professional of which the facility is aware;
- (3) written procedures, treatments or orders from a physician or other licensed health professional; and
- (4) implementation of procedures, treatments or orders specified in Subparagraph (b)(3) of this Rule.

(c) The following shall apply to the resident's physician or physician service:

- (1) The resident or the resident's responsible person shall be allowed to choose a physician or physician service to attend the resident; and
- (2) When the resident cannot remain under the care of the chosen physician or physician service, the facility shall assure that arrangements are made with the resident or

responsible person for choosing and securing another physician or physician service within 45 days or prior to the signing of the care plan as required in Rule .0802 of this Subchapter.

Authority G.S. 131D-2; 143B-165; S.L. 99-0334; 2002-0160.

10A NCAC 13G .0903 LICENSED HEALTH PROFESSIONAL SUPPORT

(a) The facility shall assure that an appropriate licensed health professional a registered nurse, licensed under G.S. 90, Article 9A, participates in the on-site review and evaluation of the residents' health status, care plan and care provided for residents requiring, but not limited to, one or more of the following personal care tasks: ~~The review and evaluation shall be completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter.~~

- (1) applying and removing ace bandages, ted hose, ~~and binders, and braces and splints;~~
- (2) feeding techniques for residents with swallowing problems;
- (3) bowel or bladder training programs to regain continence;
- (4) enemas, suppositories and vaginal douches;
- (5) positioning and emptying of the urinary catheter bag and cleaning around the urinary catheter;
- (6) chest physiotherapy or postural drainage;
- (7) clean dressing ~~changes; changes, excluding packing wounds and application of prescribed enzymatic debriding agents;~~
- (8) collecting and testing of fingerstick blood samples;
- (9) care of well-established colostomy or ileostomy (having a healed surgical site without sutures or drainage);
- (10) care for pressure ~~ulcers; ulcers, up to and including a Stage II pressure ulcer which is a superficial ulcer presenting as an abrasion, blister or shallow crater;~~
- (11) inhalation medication by machine;
- ~~(12) forcing and restricting fluids;~~
- ~~(12)(13) maintaining accurate intake and output data;~~
- ~~(13)(14) medication administration through a well-established gastrostomy feeding tube; tube (having a healed surgical site without sutures or drainage and through which a feeding regimen has been successfully established);~~
- ~~(14)(15) medication administration through injection;~~
Note: Unlicensed staff may only administer subcutaneous injections as stated in Rule ~~.3804(q).1004(q)~~ of this Subchapter;
- ~~(15)(16) oxygen administration and monitoring;~~
- ~~(16)(17) the care of residents who are physically restrained and the use of care practices as alternatives to restraints;~~
- ~~(17)(18) oral suctioning;~~
- ~~(18)(19) care of well-established tracheostomy; or tracheostomy, not to include indo-tracheal suctioning;~~

PROPOSED RULES

- ~~(19)(20)~~ administering and monitoring of gastrostomy tube feedings; feedings through a well-established gastrostomy tube (see description in Subparagraph (14) of this Paragraph);
- ~~(21)~~ the monitoring of continuous positive air pressure devices (CPAP and BIPAP);
- ~~(22)~~ application of prescribed heat therapy;
- ~~(23)~~ application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;
- ~~(24)~~ ambulation using assistive devices that requires physical assistance;
- ~~(25)~~ range of motion exercises;
- ~~(26)~~ any other prescribed physical or occupational therapy;
- ~~(27)~~ transferring semi-ambulatory or non-ambulatory residents; or
- ~~(28)~~ nurse aide II tasks according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.

(b) The appropriate licensed health professional, as required in Paragraph (a) of this Rule is:

- ~~(1)~~ a registered nurse licensed under G.S. 90, Article 9A, for tasks listed in Subparagraphs (a)(1)-(a)(28) of this Rule;
- ~~(2)~~ an occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B for tasks listed in Subparagraphs (a)(17) and (a)(22)-(a)(27) of this Paragraph;
- ~~(3)~~ a respiratory care practitioner licensed under G.S. 90, Article 38, for tasks listed in Subparagraphs (a)(6), (11), (16), (18), (19) and (21) of this Rule; or
- ~~(4)~~ a registered nurse licensed under G.S. 90, Article 9A, for tasks that can be performed by a nurse aide II according to the scope of practice as established in the Nursing Practice Act and rules promulgated under that act in 21 NCAC 36.

~~(b) The facility shall assure that a registered nurse, occupational therapist licensed under G.S. 90, Article 18D or physical therapist licensed under G.S. 90-270.24, Article 18B, participates in the on-site review and evaluation of the residents' health status, care plan and care provided within the time frames specified in Paragraph (a) of this Rule for those residents who require one or more of the following personal care tasks:~~

- ~~(1)~~ application of prescribed heat therapy;
- ~~(2)~~ application and removal of prosthetic devices except as used in early post-operative treatment for shaping of the extremity;
- ~~(3)~~ ambulation using assistive devices;
- ~~(4)~~ range of motion exercises;
- ~~(5)~~ any other prescribed physical or occupational therapy; or
- ~~(6)~~ transferring semi-ambulatory or non-ambulatory residents.

~~(c) The facility shall not provide care to residents with conditions or care needs as stated in G.S. 131D 2(a1).~~

~~(d)(c)~~ The facility shall assure that participation by a registered nurse, occupational therapist or physical therapist in the on-site review and evaluation of the residents' health status, care plan and care provided, ~~includes: as required in Paragraph (a) of this Rule, is completed within the first 30 days of admission or within 30 days from the date a resident develops the need for the task and at least quarterly thereafter, and includes the following:~~

- ~~(1)~~ ~~assuring that licensed practical nurses and non-licensed personnel providing care and performing the tasks are competency validated according to Paragraph (e) of this Rule;~~
- ~~(2)(1)~~ performing a physical assessment of the residents as related to ~~their diagnosis and their the resident's diagnosis and or current condition;~~ condition requiring one or more of the tasks specified in Paragraph (a) of this Rule;
- ~~(3)(2)~~ evaluating the resident's progress to care being provided;
- ~~(4)(3)~~ recommending changes in the care of the resident as ~~needed;~~ needed based on the physical assessment and evaluation of the progress of the resident; and
- ~~(5)(4)~~ documenting the activities in Subparagraphs (1) through (3) of this Paragraph.

~~(d) The facility shall assure action is taken in response to the licensed health professional review and documented, and that the physician or appropriate health professional is informed of the recommendations when necessary.~~

~~(e) The facility shall assure that licensed practical nurses and non-licensed personnel are trained and competency validated for personal care tasks specified in Paragraphs (a and (b) of this Rule. Competency validation shall be completed prior to staff performing the personal care task and documentation shall be in the facility and readily available. Staff shall be competency validated by the following health professionals:~~

- ~~(1)~~ A registered nurse shall validate the competency of staff who perform personal care tasks specified in Paragraph (a) of this Rule. In lieu of a registered nurse, a registered respiratory therapist may validate the competency of staff who perform personal care tasks (6), (11), (15), (17), (18), and specified in Paragraph (a) of this Rule. In lieu of a registered nurse, a registered pharmacist may validate the competency of staff who perform personal care task (8) specified in Paragraph (a) of this Rule.
- ~~(2)~~ A registered nurse, occupational therapist or physical therapist shall validate the competency of staff who perform personal care tasks specified in Paragraph (b)(1-6) of this Rule.

~~(f) The facility shall assure that training on the care of residents with diabetes is provided to unlicensed staff prior to the administration of insulin as follows and documented:~~

- ~~(1)~~ Training shall be provided by a registered nurse, registered pharmacist.
- ~~(2)~~ Training shall include at least the following:

- (A) ~~basic facts about diabetes and care involved in the management of diabetes;~~
- (B) ~~insulin action;~~
- (C) ~~insulin storage;~~
- (D) ~~mixing, measuring and injection techniques for insulin administration;~~
- (E) ~~treatment and prevention of hypoglycemia and hyperglycemia, including signs and symptoms;~~
- (F) ~~blood glucose monitoring; and~~
- (G) ~~universal precautions; and~~

~~(g) The facility shall assure that staff who perform personal care tasks listed in Paragraphs (a) and (b) of this Rule are at least annually observed providing care to residents by a licensed registered nurse or other appropriate licensed health professional, as specified in Paragraph (d) of this Rule, who is employed by the facility or under contract or agreement, individually or through an agency, with the facility. Annual competency validation shall be documented and readily available for review.~~

Authority G.S. 131D-2; 131D-4.5; 143B-165; S.L. 1999-0334.

10A NCAC 13G .0904 NUTRITION AND FOOD SERVICE

(a) Preparation and Serving of Food:

- (1) ~~Sufficient staff, space, and equipment must be provided for safe, sanitary food preparation and service, including individual assistance to residents as needed;~~
- (2) ~~The kitchen, dining, and food storage areas must be clean, orderly, and protected from possible contamination;~~
- (3) ~~All meat processing must occur at a North Carolina Department of Agriculture approved processing plant;~~
- (4) ~~Table service, which means the place where the resident is served food, must include an appropriate place setting. Typically, the place setting is to include a minimum of a knife, fork, teaspoon, glass, napkin and a plate;~~
- (5) ~~Hot food shall be served hot and cold food served cold and in a consistency to meet individual needs. If residents require assistance in eating, food shall be maintained at serving temperature until assistance is provided.~~

(b) Storage of Food:

- (1) ~~All food being stored, prepared, and served must be protected from contamination;~~
- (2) ~~Any home canning of fruits or vegetables must be processed using the pressure method; and~~
- (3) ~~At least one week's supply of food must be in the home.~~

(c) Menu Planning:

- (1) ~~Menus must be planned in accordance with the requirements cited in Paragraph (d) of this Rule regarding daily service. Menus must be in writing with serving quantities specified.~~

~~The menus are to be prepared at least one week in advance;~~

- (2) ~~Menus must be dated and posted in the kitchen for the guidance of the food service staff;~~
- (3) ~~Any substitutions made in the menu must be of equal nutritional value and must be recorded before being served to indicate the foods actually served to residents;~~
- (4) ~~Meals shall be planned taking into account the food preferences and customs of the residents. Meat substitutes must be provided to residents who choose to be vegetarians or who by religious or cultural preferences do not eat meat. However, an administrator may not impose vegetarian practices, or other religious or cultural food practices on a resident;~~
- (5) ~~A copy of the NCDA Diet Manual must be in the home for use in its food service. Where there is a cluster of homes, one diet manual may be shared by the homes;~~
- (6) ~~Menus as served and invoices or other appropriate receipts of purchases must be kept on file by the month for a year and are subject to periodic review by the monitoring and licensing agencies.~~

(d) Daily Service:

- (1) ~~Each resident is to be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and the evening meal. Variations from the required three meals, menus and specified time intervals to meet individualized needs of residents in an HIV-designated facility shall be planned or reviewed by a physician and registered dietitian and documented;~~
- (2) ~~Suitable foods or liquids (e.g., fruit, milk, juices) must be offered between meals and shown on the menu as a snack;~~
- (3) ~~Daily menus must include the following:~~
 - (A) ~~Homogenized or low fat milk or buttermilk. One cup (8 ounces) must be offered to each resident at least twice a day. Because milk is an important source of calcium and vitamin D, the resident must be encouraged to consume two cups (16 ounces) of milk daily as a beverage or as part of a meal (e.g., with dry cereal). Reconstituted dry milk or diluted evaporated milk may be used only in cooking and not for drinking purposes due to the risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used;~~
 - (B) ~~Fruit. Two one-half cup servings (8 ounces). A one-half cup (4 ounces) of citrus fruit or juice, and a one-half cup (4 ounces) of another variety of fresh, dried, or canned fruit must be~~

served. Citrus fruits include oranges and grapefruits. One orange or one half grapefruit is considered a serving. One cup of tomato juice or tomatoes may be used instead of citrus. Single strength canned or frozen fruit juices which are vitamin C fortified may be substituted for a citrus fruit or juice if it is noted on the label that there is 100 percent of the recommended dietary allowance of vitamin C in each six ounces of juice;

(C) Vegetables. Two one-half cup servings (8 ounces). One of these must be a dark green leafy or deep yellow vegetable every other day or three times a week;

(D) Eggs. At least three times a week unless limited by physician's orders;

(E) Fats. Include butter, oil, or margarine. Restrict the use of seasoning with meat fats when there are older residents since older people find these difficult to digest;

(F) Protein. At least two ounces of cooked meat must be served at both the noon and evening meal except a meat substitute equal to two ounces of cooked meat may be served three times a week but not more than once a day. Examples of adequate meat substitutes are two eggs, two ounces of pure cheese, and one cup of dry beans or peas; Note: Bacon is considered a fat instead of a meat.

(G) Cereals and Breads. At least four servings, whole grain or enriched (such as oatmeal, enriched rice, corn meal, enriched prepared cereals or bread). Examples of one serving of bread are one slice, one biscuit, one roll, and one square of corn bread. One serving of cereal equals one half cup cooked or three fourths cup dry cereal. Cereal for the evening meal is not, by itself, acceptable due to the lack of variety and lack of needed nutrients; and

(H) Water and Other Beverages. Water must be offered at each meal in addition to other beverages. Six to eight cups of liquids are needed daily to keep the body functioning properly;

(4) Sandwiches shall not be served alone for any meal; and

(5) Generally the energy intake for persons aged 51-75 should be 2400 calories for males and 1800 calories for females according to the 1980 recommended dietary allowances of the

National Research Council, National Academy of Sciences.

(e) Modified Diets:

(1) All modified diet orders must be in writing from the resident's physician. Modified diet orders must be calorie or gram specific unless standing orders, which include the definition of any modified diets, have been obtained from the physician and are on file in the home.

(2) Menus for these modified diets must be planned or reviewed and signed (including registration number) by a registered dietitian;

(3) The administrator is responsible for maintaining an accurate and current listing of residents for whom modified diets have been prescribed and the modified diet ordered, for use by food service personnel;

(4) The administrator shall ask a physician or registered dietitian for answers to questions about the diets of residents; and

(5) The administrator is responsible for assisting residents who need modified diets in understanding and accepting these diets.

(a) Food Procurement and Safety:

(1) The kitchen, dining and food storage areas shall be clean, orderly and protected from contamination.

(2) All food and beverage being procured, stored, prepared or served by the facility shall be protected from contamination.

(3) All meat processing shall occur at a USDA-approved processing plant.

(4) There shall be at least a three-day supply of perishable food and a five-day supply of non-perishable food in the facility based on the menus, for both regular and therapeutic diets.

(b) Food Preparation and Service:

(1) Sufficient staff, space and equipment shall be provided for safe and sanitary food storage, preparation and service.

(2) Table service shall include a napkin and non-disposable place setting consisting of at least a knife, fork, spoon, plate and beverage containers. Exceptions may be made on an individual basis and shall be based on documented needs or preferences of the resident.

(3) Hot foods shall be served hot and cold foods shall be served cold.

(4) If residents require feeding assistance, food shall be maintained at serving temperature until assistance is provided.

(c) Menus:

(1) Menus shall be prepared at least one week in advance with serving quantities specified and in accordance with the Daily Food Requirements in Paragraph (d) of this Rule.

(2) Menus shall be maintained in the kitchen and identified as to the current menu day and cycle for any given day for guidance of food service staff.

- (3) Any substitutions made in the menu shall be of equal nutritional value, appropriate for therapeutic diets and documented to indicate the foods actually served to residents.
- (4) Menus shall be planned to take into account the food preferences and customs of the residents.
- (5) Menus as served and invoices or other appropriate receipts of purchases shall be maintained in the facility for 30 days.
- (6) Menus for all therapeutic diets shall be planned or reviewed and signed by a registered dietitian with the registered dietitian's registration number included.
- (7) The facility shall have a matching therapeutic diet menu for all physician-ordered therapeutic diets for guidance of food service staff.

(d) Daily Food Requirements:

- (1) Each resident shall be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and evening meals.
- (2) Foods and beverages that are appropriate to residents' diets shall be offered or made available to all residents as snacks between each meal for a total of three snacks per day and shown on the menu as snacks.
- (3) Daily menus for regular diets shall include the following:
 - (A) Homogenized whole milk, low fat milk, skim milk or buttermilk: One cup (eight ounces) of pasteurized milk at least twice a day. Reconstituted dry milk or diluted evaporated milk may be used in cooking only and not for drinking purposes due to risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used.
 - (B) Fruit: Two servings of fruit (one serving equals six ounces of juice: ½ cup of raw, canned or cooked fruit; one medium-size whole fruit; or ¼ cup dried fruit). One serving shall be a citrus fruit or a single strength juice in which there is 100% of the recommended dietary allowance of vitamin C in each six ounces of juice. The second fruit serving shall be of another variety of fresh, dried or canned fruit.
 - (C) Vegetables: Three servings of vegetables (one serving equals ½ cup of cooked or canned vegetable; six ounces of vegetable juice; or one cup of raw vegetable). One of these shall be a dark green, leafy or deep yellow three times a week.
 - (D) Eggs: One whole egg or appropriate substitute (e.g., two egg whites or ¼

cup of pasteurized egg product) at least three times a week at breakfast.

- (E) Protein: two-three ounces of pure cooked meat two to three times a day. An appropriate substitute (e.g., four tablespoons of peanut butter, one cup of cooked dried peas or beans or two ounces of pure cheese) may be served three times a week but not more than once a day, unless requested by the resident.

Note: Bacon is considered to be fat and not meat for the purposes of this Rule.

- (F) Cereals and Breads: At least six servings of whole grain or enriched cereal and bread or grain products a day. Examples of one serving are as follows: one slice of bread; ½ of a bagel, English muffin or hamburger bun; one small muffin, roll, biscuit or piece of cornbread; ½ cup cooked rice or cereal (e.g., oatmeal or grits); ¾ cup ready-to-eat cereal; or one waffle, pancake or tortilla that is six inches in diameter. Cereals and breads offered as snacks can be included in meeting this requirement.

- (G) Fats: Include butter, oil, margarine or items consisting primarily of one of these (e.g., icing or gravy).

- (H) Water and Other Beverages: Water shall be served to each resident at each meal, in addition to other beverages.

(e) Therapeutic Diets:

- (1) All therapeutic diet orders including thickened liquids shall be in writing from the resident's physician. Where applicable, the therapeutic diet order shall be specific to calorie, gram or consistency, such as for calorie controlled ADA diets, low sodium diets or thickened liquids, unless there are written orders which include the definition of any therapeutic diet identified in the facility's therapeutic menu approved by a registered dietitian.
- (2) Physician orders for nutritional supplements shall be in writing from the resident's physician and be brand specific, unless the facility has defined a house supplement in its communication to the physician, and shall specify quantity and frequency.
- (3) The facility shall maintain an accurate and current listing of residents with physician-ordered therapeutic diets for guidance of food service staff.
- (4) All therapeutic diets, including nutritional supplements and thickened liquids, shall be served as ordered by the resident's physician.

(f) Individual Feeding Assistance:

- (1) Sufficient staff shall be available for individual feeding assistance as needed.

PROPOSED RULES

(2) Residents needing help in eating shall be assisted upon receipt of the meal and the assistance shall be unhurried and in a manner that maintains or enhances each resident's dignity and respect.

(g) Variations from the required three meals or time intervals between meals to meet individualized needs or preferences of residents shall be documented in the resident's record.

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

SECTION .1200 - POLICIES, RECORDS AND REPORTS

10A NCAC 13G .1205 POPULATION REPORT

~~The administrator or supervisor in charge shall submit by January 31 of each year an annual population report for the previous calendar year to the county department of social services. If the home closes during the year, the administrator or supervisor in charge shall report for the previous calendar year to date of closing.~~

Authority G.S. 131D-2; 143B-153; 143B-165; S.L. 2002-0160.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rules cited as 15A NCAC 13B .0531-.0547.

Proposed Effective Date: July 1, 2004

Public Hearing:

Date: January 15, 2004

Time: 2:00 p.m.

Location: Groundfloor Hearing Room, Archdale Building, 512 Salisbury St., Raleigh, NC

Reason for Proposed Action: *These Rules are intended to provide regulatory guidance for the development of new and the continued operation of construction and demolition landfills and provide for the closure of temporary Construction and Demolition (C&D) landfills operating on top of closed Municipal Solid Waste (MSW) landfills.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to the rules proposed rules by contacting: Jim Barber, DENR – Division of Waste Management Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone 919-733-0692 ext. 345, fax 919-733-4810, email jim.barber@ncmail.net.*

Written comments may be submitted to: *Jim Barber, DENR – Division of Waste Management Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646, phone 919-733-0692 ext. 345, fax 919-733-4810, email jim.barber@ncmail.net.*

Comment period ends: February 13, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0500 - DISPOSAL SITES

15A NCAC 13B .0531 PURPOSE, SCOPE, AND APPLICABILITY FOR CONSTRUCTION AND DEMOLITION LANDFILLS (C&DLF)

(a) Purpose. The purpose of Rules .0531 through .0547 of this Section is to regulate the siting, design, construction, operation, closure and post-closure of all construction and demolition solid waste landfill (C&DLF) facilities and units.

(b) Scope. Rules .0531 through .0547 of this Section describe the performance standards, application requirements, and permitting procedures for all C&DLF facilities and units. The requirements of Rules .0531 through .0547 of this Section are intended to:

- (1) establish the State standards for C&DLF facilities and units to provide for effective disposal practices and protect the public health and environment; and
- (2) Coordinate other State Rules applicable to landfills.

(c) Applicability. Owners and operators of new and existing C&DLF facilities and units shall conform to the requirements of Rules .0531 through .0547 of this Section as follows:

- (1) C&DLF units which do not receive solid waste after July 1, 2004, shall comply with the Conditions of the Solid Waste Permit and Rule .0510 of this Section.
- (2) Existing C&DLF units which continue to receive waste after July 1, 2004, shall comply with the cap system criteria set forth in Subparagraph (c)(1) of Rule .0543 of this Section, at the time of closure of the unit(s).

(3) C&DLFs that receive waste after July 1, 2004 shall comply with the requirements of Rules .0531 through .0546 of this Section.

(d) Owners and operators of a C&DLF facility shall comply with any other applicable Federal and State laws, rules, regulations, or other requirements.

Authority G.S. 130A-294.

15A NCAC 13B .0532 DEFINITIONS FOR C&DLF FACILITIES

This Rule contains definitions for terms that appear throughout the Rules pertaining to Construction and Demolition Landfills, Rules .0531 through .0547 of this Section; additional definitions appear in the specific Rules to which they apply.

- (1) "Active life" means the period of operation beginning with the initial receipt of C&D solid waste and ending at completion of closure activities in accordance with Rule .0543 of this Section.
- (2) "Active portion" means that part of a facility or unit(s) that has received or is receiving wastes and that has not been closed in accordance with Rule .0543 of this Section.
- (3) "Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding ground water.
- (4) "Base liner system" means the liner system installed on the C&DLF unit's foundation to control the flow of leachate.
- (5) "Bedrock" means material that achieves auger refusal.
- (6) "Cap system" means a liner system installed over the C&DLF unit(s) to minimize infiltration of precipitation and contain the wastes.
- (7) "C&D solid waste" means solid waste generated solely from the construction, remodeling, repair, or demolition operations on pavement, and buildings or structures. C&D waste does not include municipal and industrial wastes that may be generated by the on-going operations at buildings or structures.
- (8) "Existing C&DLF unit" means any C&DLF unit that is receiving solid waste as of July 1, 2004.
- (9) "Ground water" means water below the land surface in a zone of saturation.
- (10) "Hazardous Waste" means a solid waste as defined in G.S.130A-290 (a)(8). "Hazardous Waste" does not include those solid wastes excluded from regulation pursuant to 40 CFR 261.4, incorporated by reference in 15A NCAC 13A .0106. "Hazardous Waste" does include hazardous waste generated by conditionally exempt small quantity generators as defined in 40 CFR 261.5, incorporated by reference in 15A NCAC 13A .0106.
- (11) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste

regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

- (12) "Landfill facility" means all contiguous land and structures, waste management unit(s), other appurtenances, and improvements on the land within the legal description of the site included in or proposed for the Solid Waste Permit. Existing facilities are those facilities which were permitted by the Division prior to July 1, 2004. Facilities permitted on or after July 1, 2004 are new facilities.
- (13) "Landfill unit" means a discrete area of land or an excavation, that receives a particular type of waste such as C&D, Industrial, or MSW solid waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257. Such a landfill unit may be publicly or privately owned, may be located at a MSWLF, an Industrial landfill facility, or other waste management facility.
- (14) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing C&DLF unit(s).
- (15) "Liner system" means an engineered environmental control system which can incorporate filters, drainage layers, compacted soil liners, geomembrane liners, piping systems, and connected structures.
- (16) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), S.W. 846.
- (17) "Open burning" means the combustion of any solid waste without:
 - (a) control of combustion air to maintain adequate temperature for efficient combustion;
 - (b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
 - (c) control of the emission of the combustion products.
- (18) "Project engineer" means the official representative of the permittee who is licensed to practice engineering in the State of North

Carolina, who is responsible for observing, documenting, and certifying that activities related to the quality assurance of the construction of the solid waste management unit conforms to the Division approved plan, the permit to construct and the rules specified in this Section. All certifications must bear the seal and signature of the professional engineer and the date of certification.

- (19) "Run-off" means any rainwater that drains over land from any part of a facility or unit.
- (20) "Run-on" means any rainwater that drains over land onto any part of a facility.
- (21) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Authority G.S. 130A-294.

15A NCAC 13B .0533 GENERAL APPLICATION REQUIREMENTS AND PROCESSING FOR C&DLF FACILITIES

(a) Applicability. Owners or operators of a proposed or existing C&DLF unit or facility shall submit an application document as detailed in Rule .0535 of this Section in accordance with the criteria and scheduling requirements set forth in this Paragraph.

- (1) New facility. Owners or operators proposing to establish a C&DLF facility or unit in accordance with the following criteria shall submit a Site Study and subsequently, an application for a permit to construct as set forth in Paragraph (a) of Rule .0535 of this Section.
 - (A) The owner or operator proposes to establish a new facility not previously permitted by the Division.
 - (B) The owner or operator proposes to expand the landfill facility in order to expand the C&DLF unit(s) boundary approved in accordance with Subparagraph (a)(1) of Rule .0536 of this Section.
- (2) Amendment to the permit. The owner or operator shall prepare an application to amend the permit to construct for any subsequent phase of landfill development in accordance with Paragraph (b) of Rule .0535 of this Section and submit the application:
 - (A) at least 180 days prior to the date scheduled for commencing construction; or
 - (B) five years from the issuance date of the initial permit to operate or as specified in the effective permit.
- (3) Substantial amendment to the permit. A permit issued in accordance with Paragraph (c) of this Rule approves a facility plan for the life of the C&DLF facility and a set of plans for the initial phase of landfill development. The

owner or operator shall prepare an application in accordance with Paragraph (c) of Rule .0535 of this Section and submit the application when there is:

- (A) a substantial change in accordance to G.S.130A-294 (b)(1);
 - (B) transfer of ownership of the C&DLF facility.
- (4) Modifications to the permit. An owner or operator proposing changes to the plans approved in the permit shall request prior approval from the Division in accordance with Paragraph (d) of Rule .0535 of this Section.

(b) Application format guidelines. All applications and plans required by Rules .0531 through .0547 of this Section shall be prepared in accordance with the following guidelines:

- (1) The initial application shall:
 - (A) contain a cover sheet, stating the project title and location, the applicant's name, and the engineer's name, address, signature, date of signature and seal; and
 - (B) contain a statement defining the purpose of the submittal signed and dated by the applicant.
- (2) The text of the application shall:
 - (A) be submitted in a three ring binder;
 - (B) contain a table of contents or index outlining the body of the application and the appendices;
 - (C) be paginated consecutively; and
 - (D) identify revised text by noting the date of revision on the page.
- (3) Drawings. The engineering drawings for all landfill facilities shall be submitted using the following format.
 - (A) The sheet size with title blocks shall be at least 22 inches by 34 inches.
 - (B) The cover sheet shall include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal.
 - (C) Where the requirements do not explicitly specify a minimum scale, maps and drawings shall be prepared at a scale that adequately illustrates the subject requirement(s).
- (4) Number of copies. An applicant shall submit a minimum of three copies of each original application document and any revisions to the Division. The Division may request additional copies as necessary.

(c) Permitting and Public Information Procedures.

- (1) Purpose, Scope and Applicability.
 - (A) Purpose. The permitting process shall provide for public review of and input to permit documents containing the applicable design and operating conditions and shall provide for consideration of comments received

- and notification to the public of the permit design.
- (B) Scope. Public participation is provided for in these Rules. Public comment regarding permit renewals for existing facilities shall be limited to new information pertinent to the permit to construct a lateral expansion or a new C&DLF unit.
- (C) Applicability. Applications for a Permit to Construct for a new facility or a substantial amendment to the permit for an existing facility or a modification to the permit involving corrective remedy selection required by Paragraph (d) through (h) of Rule .0545 of this Section shall be subject to the requirements of this Paragraph. Applications submitted in accordance with Subparagraphs (a)(2) and (a)(4) of this Rule are not subject to the requirements of this Paragraph.
- (2) Draft Permits.
- (A) Once an application is complete, the Division shall tentatively decide whether the permit should be issued or denied.
- (B) If the Division decides the permit should be denied, a notice to deny shall be sent to the applicant. Reasons for permit denial shall be in accordance with Rule .0203(e) of this Subchapter.
- (C) If the Division tentatively decides the permit should be issued, a draft permit shall be prepared.
- (D) A draft permit shall contain (either expressly or by reference) all applicable terms and conditions for the permit.
- (E) All draft permits shall be subject to the procedures of Subparagraphs (3), (4), (5), (6), (7) and (8) of this Paragraph, unless otherwise specified in those Subparagraphs.
- (3) Fact Sheet.
- (A) A fact sheet shall be prepared for every draft permit or notice to deny the permit.
- (B) The fact sheet shall include the following:
- (i) a brief description of the type of facility or activity, which is the subject of the draft permit;
- (ii) a description of the area to be served and of the volume and characteristics of the waste stream, and a projection on the useful life of the landfill;
- (iii) a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the permit application;
- (iv) a description of the procedures for reaching a decision on the draft permit, including the beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph and the address where comments will be received; procedures for requesting a public hearing; and any other procedures by which the public may participate in the decision; and
- (v) name and telephone number of a person to contact for additional information.
- (C) The Division shall send this fact sheet to the applicant and shall be made available to the public for review or copying at the central office of the Division of Waste Management – Solid Waste Section. The fact sheet may be available on the Division web site.
- (4) Public Notice of Permit Actions and Public Hearings.
- (A) Scope.
- (i) The Division shall give public notice that the following actions have occurred:
- (I) a draft permit has been prepared; or
- (II) a public hearing has been scheduled under Subparagraph (6) of this Paragraph; or
- (III) a notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.
- (ii) No public notice is required when a request for a permit modification is denied.
- (iii) Written notice of denial shall be given to the applicant.
- (iv) Public notices may describe more than one permit or permit action.
- (B) Timing.

PROPOSED RULES

- (i) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.
 - (ii) Public notice of a public hearing shall be given at least 15 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
 - (C) Methods. Public notice of activities described in Subpart (4)(A)(i) of this Subparagraph shall be given by the following.
 - (i) By posting in the post office and public places of the municipalities nearest the site under consideration; or
 - (ii) By publication of a notice in a daily or weekly local newspaper of general circulation; or
 - (iii) By publication on the Department website; or
 - (iv) By any other method deemed necessary or appropriate by the Division to give actual notice of the activities to persons potentially affected.
 - (D) Contents.
 - (i) General Public Notices. All public notices issued under this Part shall contain the following minimum information:
 - (I) name, address and phone number of the office processing the permit action for which notice is being given;
 - (II) name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 - (III) a brief description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted;
 - (ii) Public Notices for Public Hearing. In addition to the general public notice described in Subpart (i) of this Part, the public notice of a public hearing shall contain the following information:
 - (I) Date, time, and place of the public hearing;
 - (II) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and
 - (III) A concise statement of the issues raised by the persons
- (IV) a brief description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled), and other procedures by which the public may participate in the permit decision;
 - (V) name, address, and telephone number of a person from whom interested persons may obtain further information;
 - (VI) a description of the time frame and procedure for making an approval or disapproval decision of this application; and
 - (VII) any additional information considered necessary or proper as required by the Division.

- requesting the hearing.
- (5) Public Comments and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the decision and shall be answered as provided in Subparagraph (9) of this Paragraph.
- (6) Public Hearings.
- (A) Public Hearing Criteria.
- (i) The Division shall hold a public hearing whenever on the basis of requests, a significant degree of public interest in a draft permit(s) is determined.
- (ii) The Division may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the permit decision.
- (iii) Public hearings held pursuant to this Rule shall be at a location convenient to the nearest population center to the subject facility.
- (iv) Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.
- (B) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Subparagraph (4) of this Paragraph shall automatically be extended to the close of any public hearing under this Subparagraph. The hearing officer may also extend the comment period by so stating at the hearing.
- (C) A tape recording or written transcript of the hearing shall be made available to the public for review or copying at the central office of the Division of Waste Management - Solid Waste Section.
- (7) Reopening of the Public Comment Period.
- (A) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit action, the Division may take one or more of the following actions:
- (i) prepare a new draft permit, appropriately modified, under Subparagraph (2) of this Paragraph;
- (ii) prepare a fact sheet or revised fact sheet under Subparagraph (3) of this Paragraph and reopen the comment period under Subparagraph (4) of this Paragraph; or
- (iii) reopen or extend the comment period under Subparagraph (4) of this Paragraph to give interested persons an opportunity to comment on the information or arguments submitted.
- (B) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Subparagraph (4) of this Paragraph shall define the scope of the reopening.
- (C) Public notice of any of the actions of this Subparagraph shall be issued under Subparagraph (4) of this Paragraph.
- (8) Permit Decision.
- (A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the permit decision. For the purposes of this Subparagraph, a permit decision means a decision to issue, deny or modify a permit.
- (B) A permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.
- (9) Response to Comments.
- (A) At the time that a permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a response to comments. This response shall:
- (i) specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change; and

(ii) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.

(B) The response to comments shall be made available to the public for review or copying at the central office of the Division of Waste Management – Solid Waste Section.

(d) Permit approval or denial.

(1) The Division shall review all permit applications in accordance with Rule .0203 of Section .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES.

Authority G.S.130A-294.

15A NCAC 13B .0534 GENERAL REQUIREMENTS FOR C&DLF FACILITIES AND UNITS

(a) Applicability. Permits issued by the Division for C&DLF facilities and units shall be subject to the general requirements set forth in this Rule.

(b) Terms of the Permit. The Solid Waste Management Permit shall incorporate requirements necessary to comply with this Subchapter and the North Carolina Solid Waste Management Act including, but not limited to, the provisions of this Paragraph.

(1) Division Approved Plan. Permits issued subsequent to the effective date of this Rule shall incorporate a Division approved plan.

(A) The scope of the Division approved plan shall be limited to the information necessary to comply with the requirements set forth in Rule .0535 of this Section.

(B) The Division approved plans shall be subject to and may be limited by the conditions of the permit.

(C) The Division approved plans for a new facility shall be described in the permit and shall include, but not be limited to, the following:

(i) Facility plan, Rule.0537 of this Section;

(ii) Engineering plan, Rule .0539 of this Section;

(iii) Construction Quality Assurance Plan, Rule .0541 of this Section;

(iv) Operation plan, Rule .0542 of this Section;

(v) Monitoring plans, Rule .0544 of this Section; and

(vi) Closure and post-closure plan, Rule .0543 of this Section.

(2) Permit provisions. All C&DLF facilities and units shall conform to the specific conditions set forth in the permit and the following

general provisions. Nothing in this Subparagraph shall be construed to limit the conditions the Division may impose on a permit.

(A) Duty to Comply. The permittee shall comply with all conditions of the permit, unless otherwise authorized by the Division. Any permit noncompliance, except as otherwise authorized by the Division, constitutes a violation of the Act and is grounds for enforcement action or for permit revocation or modification.

(B) Duty to Mitigate. In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.

(C) Duty to Provide Information. The permittee shall furnish to the Division, any relevant information that the Division may request to determine whether cause exists for modifying or revoking the permit, or to determine compliance with the permit. The permittee shall also furnish to the Division, upon request, copies of records as required to be kept by the permit.

(D) Recordation Procedures. The permittee shall comply with the requirements of Rule .0204 of this Subchapter RECORDATION OF LAND DISPOSAL PERMITS in order for a new permit to be effective.

(E) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(F) Permit Actions. The permit may be modified, revoked and reissued, or terminated for cause in accordance with G.S.130A-23. The filing of a request by the permittee for a permit modification or termination, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

(G) No Property Rights. The permit does not convey any property rights of any sort, or any exclusive privilege. The permit is not transferable.

(H) Construction. If construction does not commence within 18 months from the

issuance date of the permit to construct, or a substantial amendment to the permit, or an amendment to the permit, then the permittee shall obtain written approval from the Division prior to construction and comply with any conditions of said approval.

(I) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(J) Inspection and Entry. The permittee shall allow the Division or an authorized representative to:

- (i) enter the permittee's premises where a regulated unit(s) or activity is located or conducted, or where records are kept under the conditions of the permit;
- (ii) have access in order to copy any records required to be kept under the conditions of the permit;
- (iii) inspect any unit(s), equipment (including monitoring and control equipment), practices or operations regulated by the Division;
- (iv) sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location; and
- (v) make photographs for the purpose of documenting items of compliance or noncompliance at waste management units, or where appropriate to protect legitimate proprietary interests, require the

permittee to make such photos for the Division.

(K) Waste Exclusions. Waste to be excluded from disposal in a C&DLF is listed in Rule .0542 of this Section. Permit conditions may include additional exclusions as they become necessary in order to protect the public health and the environment or to ensure proper landfill operation.

(L) Additional Solid Waste Management Activities. Construction and operation of additional solid waste management activities at the landfill facility shall not impede operation or monitoring of the C&DLF unit(s) and shall be approved by the Division.

Authority G.S. 130A-294.

15A NCAC 13B .0535 APPLICATION REQUIREMENTS FOR C&DLF FACILITIES

(a) Permit for a new facility. The owner and operator of a new facility shall meet the requirements of Rule .0536 of this Section prior to submitting an application for a permit to construct.

(1) Permit to Construct. A complete application for a permit to construct shall meet the General Site Conditions and Design Requirements set forth by the Division and shall contain the following:

- (A) a facility plan that describes comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;
- (B) an engineering plan that is prepared for the initial phase of landfill development prepared in accordance with Rule .0539 of this Section;
- (C) a construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
- (D) an operation plan prepared in accordance with Rule .0542 of this Section;
- (E) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section; and
- (F) monitoring plans prepared in accordance with Paragraph (a) of Rule .0544 of this Section.

(2) Permit to Operate. The owner and operator shall meet the pre-operative requirements of the permit to construct in order to qualify the constructed C&DLF unit for a permit to operate. Construction documentation shall be submitted in a timely and organized manner in order to facilitate the Division's review.

(b) Amendment to the permit. A complete application for an amendment to the permit shall contain:

- (1) an updated engineering plan prepared in accordance with Rule .0539 of this Section;
- (2) an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
- (3) an updated operation plan prepared in accordance with Rule .0542 of this Section with the updated monitoring plan as an appendix prepared as set forth in Paragraph (b) of Rule .0544 of this Section; and
- (4) an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section.

(c) Substantial amendment to the permit. A complete application for a substantial amendment to the permit shall contain:

- (1) a facility plan that describes comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section; and
- (2) local Government approval in accordance with Subparagraph (c)(5) of Rule .0536 of this Section.

(d) Modifications to the permit. The owner or operator may propose to modify plans prepared and approved in accordance with the requirements set forth in this Section. A complete application shall identify the requirement(s) proposed for modification and provide complete information in order to demonstrate compliance with the applicable requirements of this Section.

Authority G.S. 130A-294.

15A NCAC 13B .0536 SITE STUDY FOR C&DLF FACILITIES

(a) Purpose. As required under Rule .0535 of this Section, the owner or operator shall prepare a site study which meets the requirements of this Rule. The Division shall review the site study for a proposed new facility prior to consideration of an application for a permit to construct. Following review of the site study, the Division shall notify the applicant that either:

- (1) the site is suitable and the applicant is authorized to prepare an application for a permit to construct in accordance with Rule .0535 of this Section and the General Site Conditions and Design Requirements prescribed by the Division; or
- (2) the site is deemed unsuitable for establishing a C&DLF unit(s) and shall specify the reasons that would prevent the C&DLF unit(s) from being operated in accordance with G.S.130A Article 9, or this Subchapter, and the Federal Act.

(b) Scope. The site is the land which is proposed for the landfill facility. The site study presents a characterization of the land, incorporating various investigations and requirements pertinent to suitability of a C&DLF facility. The scope of the site study includes criteria associated with the public health and welfare, and the environment. The economic feasibility of a proposed site is not within the scope of this study and instead, should be evaluated by the owner and operator prior to submitting a permit

application to the Division. The information in the site study shall accurately represent site characteristics and must be prepared by qualified environmental professionals as set forth in Subparagraph (a)(3) of Rule.0202 of this Subchapter.

(c) The site study prepared for a C&DLF facility shall include the information required by this Paragraph.

- (1) Characterization study. The site characterization study area includes the landfill facility and a 2000-foot perimeter measured from the proposed boundary of the landfill facility. The study shall include an aerial photograph taken within one year of the original submittal date, a report, and a local map. The map and photograph shall be at a scale of at least one inch equals 400 feet. The study must identify the following:
 - (A) the entire property proposed for the disposal site and any on-site easements;
 - (B) existing land use and zoning;
 - (C) the location of residential structures and schools;
 - (D) the location of commercial and industrial buildings, and other potential sources of contamination;
 - (E) the location of potable wells and public water supplies;
 - (F) historic sites;
 - (G) the existing topography and features of the disposal site including: general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes; and
 - (H) the classification of the surface water drainage from landfill site in accordance with 15A NCAC 02B .0300.

(2) Proposed Facility Plan. A conceptual plan for the development of the facility including drawings and a report must be prepared which includes the drawings and reports described in Subparagraphs (d)(1), (e)(1), (e)(2), and (e)(3) of Rule .0537 of this Section.

(3) Site Hydrogeologic Report. The study shall be prepared in accordance with the requirements set forth in Paragraph (a) of Rule .0538 of this Section.

(4) Location Restrictions. New C&DLF unit(s) shall comply with the siting criteria set forth in this Rule. In order to demonstrate compliance with specific criteria, documentation or approval by agencies other than the Division of Waste Management, Solid Waste Section may be required. The scope of demonstrations including design and construction performance shall be discussed in a site study and completed in the permit application.

- (A) Floodplains.
 - (i) C&DLF units and/or structural fill used to

construct a C&DLF unit be in accordance with G.S. 143-215.54A.

(ii) For purposes of this Paragraph:

(I) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood; and

(II) "100-year flood" means a flood that has a one-percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years the average over a significantly long period.

(B) Wetlands. New C&DLF units and lateral expansions shall not impact wetlands, unless the owner and operator, provides certification, permit and documentation procedures to the Division as required under Section 404 of the Clean Water Act, or NC Water Quality 401, or applicable State wetlands law.

(C) Unstable Areas.

(i) Owners and operators of new C&DLF facilities, existing C&DLF units, and lateral expansions of existing C&DLF units located in an unstable area shall demonstrate that engineering measures have been incorporated into the C&DLF unit's design to ensure that the integrity of the structural components of the C&DLF unit will not be disrupted. The owner and operator shall consider the following factors, at a minimum, when determining whether an area is unstable:

(I) on-site or local soil conditions that may result in significant differential settling;

(II) on-site or local geologic or geomorphologic features; and

(III) on-site or local human-made features or events (both surface and subsurface).

(ii) For purposes of this Item:

(I) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

(II) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of the C&DLF that is necessary for protection of human health and the environment.

(III) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a C&DLF unit(s).

(IV) "Areas susceptible to mass movement"

means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the C&DLF unit(s), because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(V) "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(D) Cultural Resources. A new C&DLF unit or lateral expansion shall not damage or destroy an archaeological or historical property. The Department of Cultural Resources shall determine archeological or historical significance. To aid in making a determination as to whether

the property is of archeological or historical significance, the Department of Cultural Resources may request the owner and operator to perform a site-specific survey which shall be included in the Site Study.

(E) State Nature and Historic Preserve. A new C&DLF unit or lateral expansion shall not have an adverse impact on any lands included in the State Nature and Historic Preserve.

(F) Water Supply Watersheds.

(i) A new C&DLF unit or lateral expansion shall not be located in the critical area of a water supply watershed, or in the watershed for a stream segment classified as WS-I, or in other water bodies which indicate that no new landfills are allowed in accordance with the rules codified at 15A NCAC 02B .0200 - "Classifications and Water Quality Standards Applicable To Surface Waters Of North Carolina."

(ii) Any new C&DLF unit or lateral expansion, which proposes to discharge leachate to surface waters and must obtain a National Pollution Discharge Elimination System (NPDES) Permit from the Division of Environmental Management pursuant to Section 402 of the United States Clean Water Act, shall not be located within watersheds classified as WS-II or WS-III or in other water bodies which indicate that no new discharging landfills are allowed, in accordance with the rules codified at 15A NCAC 02B .0200.

(G) Endangered and Threatened Species. A new C&DLF unit or lateral expansion shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973.

(5) Local government approvals for C&DLFs.

(A) If the permit applicant is a unit of local government in which

jurisdiction the proposed C&DLF site is located, the approval of the governing board shall be required. Approval may be in the form of either a resolution or a vote on a motion. A copy of the resolution or the minutes of the meeting where the vote was taken shall be submitted to the Division as part of the site study. A permit applicant other than the unit of local government with jurisdiction over the proposed landfill site shall obtain a franchise in accordance with G.S.130A-294(b1)(3) from the unit of local government in whose jurisdiction the site is located. A copy of the franchise shall be submitted to the Division as part of the site study.

(i) Prior to approval, the jurisdictional local government where the landfill is to be located shall hold at least one public meeting to inform the community of the proposed waste management activities as described in the proposed facility plan prepared in accordance with Subparagraph (2) of this Paragraph.

(ii) For purposes of this Subpart, public notice shall include: a legal advertisement placed in a newspaper or newspapers serving the county; and provision of a news release to at least one newspaper serving the county. In addition to news releases aforementioned, public notice may be posted on a local government website. Public notice shall include time, place, and purpose of the meetings required by this Subpart. The application for a franchise and/or other documentation as required by local government, shall be placed at a location that is accessible by the public. This location shall be noted in the public notice.

(iii) The local government where the landfill is to be located shall provide a public notice of the meeting at least 30 days prior to the meeting. Public notice shall be

documented in the site study. A tape recording or a written transcript of the meeting, all written material submitted representing community concerns, and all other relevant written material distributed or used at the meeting shall be submitted as part of the site study.

(B) A letter from the unit of local government having zoning jurisdiction over the site which states that the proposal meets all the requirements of the local zoning ordinance, or that the site is not zoned, shall be submitted to the Division as part of the site study.

(C) A letter from the unit of local government responsible for the implementation of a comprehensive solid waste management plan submitted to the Division, in accordance with G.S.130A-309.09A(b), setting forth a determination that the operation of the proposed C&DLF is consistent with the solid waste management plan shall be submitted with the site study.

(c) Site applications for a new C&DLF facility or unit submitted in accordance with Rule .0504(1) of this Section on or after January 1, 2003 and prior to April 1, 2004 are not subject to the requirements of this Rule.

Authority G.S.130A-294.

15A NCAC 13B .0537 FACILITY PLAN FOR C & DLFS

(a) Purpose. As required under Rule .0535 of this Section, a permit applicant shall prepare a facility plan which meets the requirements of this Rule.

(b) Scope.

(1) The facility plan defines the comprehensive development of the property proposed for a permit or described in the permit of an existing facility. The plan includes a set of drawings and a report which present the long-term, general design concepts related to construction, operation, and closure of the C&DLF unit(s). The scope of the plan spans the active life of the unit(s). Additional solid waste management activities located at the C&DLF facility shall be identified in the plan and shall meet the requirements of this Subchapter. The facility plan defines the waste stream proposed for management at the C&DLF facility. If different types of landfill units or non-disposal activities are included in the facility design, the plan must describe general waste acceptance procedures.

PROPOSED RULES

(2) The areal limits of the C&DLF unit(s), total capacity of the C&DLF unit(s), and the proposed waste stream shall be consistent with the Division's approval set forth in accordance with of Rule .0536 (a)(1) of this Section for a new facility.

(c) Use of Terms. The terminology used in describing areas of the C&DLF unit(s) shall be defined in the facility plan and shall be used consistently throughout a permit application. The Division recommends the use of the following terms:

(1) A "phase" is an area constructed that provides no more than approximately five years of operating capacity.

(2) A "cell" is a subdivision of a phase, which describes modular or partial construction.

(3) A "subcell" is a subdivision of a cell, which describes leachate and stormwater management, if required, for active or inactive areas of the constructed C&DLF.

(d) Facility Drawings. The facility plan shall include the following drawings:

(1) Site Development. The drawing(s) which plot site development shall be prepared on a topographic map representative of existing site conditions; the map shall locate the following:

(A) Landfill unit(s). This drawing shall delineate the areal limits of all landfill units, and incorporate the buffer requirements set forth in Subparagraph (a) of Rule .0540 of this Section.

(B) All facilities. This drawing shall locate all solid waste management facilities and facility infrastructure, including landfill units.

(C) Delineate the areal limits of grading, including borrow and stockpile areas;

(D) Define phases of development, which do not exceed approximately five years of operating capacity;

(E) Proposed final contours for the C&DLF unit(s) and facility features for closure; and

(F) Delineate physical features including floodplains, wetlands, unstable areas, and cultural resource areas as defined in Rule .0536 of this Section.

(2) Landfill Operation. The following information related to the long-term operation of the C&DLF unit shall be included in facility drawings:

(A) proposed transitional contours for each phase of development, including operational grades for existing phase(s) and construction grading for the new phase; and

(B) if included in the design, stormwater segregation features and details for inactive landfill subcells, if required.

(3) Survey. A survey locating all property boundaries for the proposed landfill facility

certified by an individual licensed to practice land surveying in the State of North Carolina.

(e) Facility Report. The facility plan shall include the following information:

(1) Waste stream. A discussion of the characteristics of the wastes received at the facility and facility specific management plans shall incorporate:

(A) the types of waste specified for disposal;

(B) average yearly disposal rates in tons and a representative daily rate which is consistent with the local government approval in accordance with Rule .0536 of this Section;

(C) the area served by the facility;

(D) procedures for segregated management at different on-site facilities; and

(E) equipment requirements for operation of the C&DLF unit(s).

(2) Landfill Capacity. An analysis of landfill capacity and soil resources shall be performed.

(A) The data and assumptions used in the analysis shall be:

(i) consistent with the facility drawings and disposal rates specified in the facility plan; and

(ii) representative of operational requirements and conditions.

(B) The conclusions shall provide estimates of:

(i) gross capacity of C&DLF unit;

(ii) gross capacity for each phase of development of C&DLF unit;

(iii) available soil resources from on-site and/or types and quantities of off-site soils needed;

(iv) required quantities of soil for landfill construction,

operation, and closure; and

(v) the estimated operating life of all C&DLF units in years.

(3) Special engineering features.

(A) Leachate management systems, if specified. An analysis of the leachate management requirements and plans for the C&DLF facility shall incorporate the information required under this Subparagraph.

(i) The performance of and design concepts for the leachate collection system within active areas of the C&DLF unit(s) and any storm water segregation

- (ii) included in the engineering design shall be described.
Normal operating conditions. Normal operating conditions shall be defined. A contingency plan shall be prepared for storm surges or other considerations exceeding design parameters for the storage or treatment facilities.
- (B) Containment and environmental control systems. A general description of the systems designed for proper landfill operation, system components, and corresponding functions shall be provided.
- (C) Base liner systems, if specified.
- (D) Other device, components, and structures, if specified.
- (B) suitability or the ability to effectively monitor the site; and
- (B) ground-water discharge features. A more extensive hydrogeologic investigation may be required for a proposed site where the owner and operator does not control the property from any landfill unit boundary to the controlling, downgradient, ground-water discharge feature(s).
- (C) the hydrogeological properties of the bedrock, if uppermost ground-water flow is predominantly in the bedrock;
- (3) Borings for which the numbers, locations, and depths are sufficient to provide an adequate understanding of the subsurface conditions and ground-water flow regime of the uppermost aquifer at the site. The number and depths of borings required will depend on the hydrogeologic characteristics of the site. At a minimum, there shall be an average of one boring for each 10 acres of the proposed landfill facility unless otherwise authorized by the Division. All borings intersecting the water table shall be converted to piezometers or monitoring wells in accordance with 15ANCAC 02C .0108.
- (4) A testing program for the borings which describes the frequency, distribution, and type of samples taken and the methods of analysis (standard ASTM test methods or methods approved by the Division) used to obtain, at a minimum, the following information:
 - (A) standard penetration - resistance;
 - (B) particle size analysis;
 - (C) soil classification: Unified Soil Classification System (USCS);
 - (D) formation descriptions; and
 - (E) saturated hydraulic conductivity, porosity, and effective porosity for each lithologic unit of the uppermost aquifer;
- (5) In addition to borings, other techniques may be used to investigate the subsurface conditions at the site, including but not limited to: geophysical well logs, surface geophysical surveys, and tracer studies;
- (6) Stratigraphic cross-sections identifying hydrogeologic and lithologic units, and stabilized water table elevations;
- (7) Water table information, including:
 - (A) tabulations of water table elevations measured at the time of boring, 24 hours, and stabilized readings for all borings (measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow direction and rate);

Authority G.S. 130A-294.

15A NCAC 13B .0538 GEOLOGIC AND HYDROGEOLOGIC INVESTIGATIONS FOR C&DLF FACILITIES

(a) Site Hydrogeologic Report. An investigation is required to assess the geologic and hydrogeologic characteristics of the proposed site to determine: the suitability of the site for solid waste management activities; which areas of the site are most suitable for C&DLF units; and the general ground-water flow paths and rates for the uppermost aquifer. The report shall provide an understanding of the relationship of the site ground-water flow regime to local and regional hydrogeologic features, with special emphasis on the relationship of C&DLF units to ground-water receptors (especially drinking water wells) and to ground-water discharge features. Additionally, the scope of the investigation shall include the general geologic information necessary to address compliance with the pertinent location restrictions described in Rule .0536 of this Section. The Site Hydrogeologic Report shall provide, at a minimum, the following information:

- (1) A report on local and regional geology and hydrogeology based on research of available literature for the area. This information is to be used in planning the field investigation. For sites located in piedmont or mountain regions, this report shall include a fracture trace analysis and Rose Diagram, based at a minimum on an evaluation of structurally controlled features identified on a topographic map of the area;
- (2) A report on field observations of the site that includes information on the following:
 - (A) topographic setting, springs, streams, drainage features, existing or abandoned wells, rock outcrops, (including trends in strike and dip), and other features that may affect site

- (B) tabulations of stabilized water table elevations over time in order to develop an understanding of seasonal fluctuations in the water table;
 - (C) an estimation of the long-term seasonal high water table based on stabilized water table readings, hydrographs of wells in the area, meteorological and climatological data, and any other information available; and
 - (D) a discussion of any natural or man-made activities that have the potential for causing water table fluctuations, including tidal variations, river stage changes, flood pool changes of reservoirs, high volume production wells, injection wells, etc;
 - (8) The horizontal and vertical dimensions of ground-water flow, including flow directions, rates, and gradients;
 - (9) Ground-water contour map(s) to show the occurrence and direction of ground-water flow in the uppermost aquifer, and any other aquifers identified in the hydrogeologic investigation. The ground-water contours shall be superimposed on a topographic map. The location of all borings and rock cores, and the water table elevations or potentiometric data at each location used to generate the ground-water contours shall be shown on the ground-water contour map(s);
 - (10) A topographic map of the site locating soil borings with accurate horizontal and vertical control, which are tied to a permanent onsite benchmark;
 - (11) Onsite boring logs; onsite field logs and notes; onsite well construction records; and piezometer construction records; available documentation for public water wells within site characterization study area, in accordance with Rule .0536(c)(2) of this Section, including construction records, number and location served by wells, and production rates; and location and approximate number served by surface water intakes within site characterization study area, in accordance with Rule .0536(c)(2) of this Section;
 - (12) Identification of other geologic and hydrologic considerations, including but not limited to: slopes, streams, springs, gullies, trenches, solution features, karst terranes, sinkholes, dikes, sills, faults, mines, ground-water discharge features, and ground-water recharge/discharge areas ; and
 - (13) A report summarizing the geological and hydrogeological evaluation of the site that includes the following:
 - (A) a description of the relationship between the uppermost aquifer of the site to local and regional geologic and hydrogeologic features;
 - (B) a discussion of the ground-water flow regime of the site focusing on the relationship of C&DLF unit(s) to ground-water receptors and to ground-water discharge features;
 - (C) a discussion of the overall suitability of the proposed site for solid waste management activities and which areas of the site are most suitable for C&DLF units; and
 - (D) a discussion of the ground-water flow regime of the uppermost aquifer at the site and the ability to effectively monitor the C&DLF units in order to ensure early detection of any release of constituents to the uppermost aquifer.
- (b) Design Hydrogeologic Report
- (1) A geological and hydrogeological report shall be submitted in the application for the Permit to Construct. This report shall contain the information required by Subparagraphs (2) and (3) of this Paragraph. The number and depths of borings required shall be based on the geologic and hydrogeologic characteristics of the landfill facility. At a minimum, there shall be an average of one boring for each acre of the investigative area. The area of investigation shall, at a minimum, be the area within the unit footprint and unit compliance boundary, unless otherwise authorized by the Division. The scope and purpose of the investigation is as follows:
 - (A) The investigation shall provide adequate information to demonstrate compliance with the vertical separation and foundation standards set forth in Paragraphs (b) and (e) of Rule .0540 of this Section.
 - (B) The report shall include an investigation of the hydrogeologic characteristics of the uppermost aquifer for the proposed phase of C&DLF development and any leachate management unit(s). The purpose of this investigation is to provide more detailed and localized data on the hydrogeologic regime for this area in order to design an effective water quality monitoring system.
 - (2) The Design Hydrogeologic Report shall provide, at a minimum, the following information:
 - (A) the information required in Subparagraphs (a)(4) through (a)(12) of this Rule;
 - (B) the technical information necessary to determine the design of the

- monitoring system as required by Subparagraph (a)(1)(C) of Rule .0544 of this Section;
- (C) the technical information necessary to determine the relevant point of compliance as required by Subparagraph (a)(1)(A)(ii)(II) of Rule .0544 of this Section;
- (D) rock cores (for sites located in the piedmont or mountain regions) for which the numbers, locations, and depths are adequate to provide an understanding of the fractured bedrock conditions and ground-water flow characteristics of at least the upper 10 feet of the bedrock. Testing for the corings shall provide, at a minimum, the following information:
 - (i) rock types;
 - (ii) recovery values;
 - (iii) rock Quality Designation (RQD) values;
 - (iv) saturated hydraulic conductivity and secondary porosity values; and
 - (v) rock descriptions, including fracturing and jointing patterns, etc.
- (E) a ground-water contour map based on the estimated long-term seasonal high water table that is superimposed on a topographic map and includes the location of all borings and rock cores and the water table elevations or potentiometric data at each location used to generate the ground-water contours.
- (F) a bedrock contour map (for sites located in piedmont or mountain regions) illustrating the contours of the upper surface of the bedrock that is superimposed on a topographic map and includes the location of all borings and rock cores and the top of rock elevations used to generate the upper surface of bedrock contours.
- (G) a three dimensional ground-water flow net or several hydrogeologic cross-sections that characterize the vertical ground-water flow regime for this area.
- (H) a report on the ground-water flow regime for the area including ground-water flow paths for both horizontal and vertical components of ground-water flow, horizontal and vertical gradients, flow rates, ground-water recharge areas and discharge areas, etc.
- (I) a report on the soils in the four feet immediately underlying the waste

with relationship to properties of the soil. Soil testing cited in Subparagraph (a)(4) of this Rule should be used as a basis for this discussion.

- (J) a certification by a Licensed Geologist that all borings, which intersect the water table, at the site have been constructed and maintained as permanent monitoring wells in accordance with 15A NCAC 02C .0108; or that the borings will be properly abandoned in accordance with the procedures for permanent abandonment of wells, as delineated in 15A NCAC 02C .0113.

Authority G.S.130A-294.

15A NCAC 13B .0539 ENGINEERING PLAN FOR C&DLF FACILITIES

(a) Purpose. The engineering plan incorporates the detailed plans and specifications relative to the design and performance of the C&DLF's containment and environmental control systems. This plan sets forth the design parameters and construction requirements for the components of the C&DLF's systems and establishes the responsibilities of the design engineer. The engineered components are described in Rule .0540 of this Section. As required under Rule .0535 of this Section, the owner or operator shall submit an engineering plan which meets the requirements of this Rule.

(b) Responsibilities of the design engineer. The engineering plan shall be prepared by a Professional Engineer licensed to practice engineering in accordance with G.S.89C and the Administrative Rules developed thereunder. The plan shall meet the requirements of this Rule; the design engineer shall incorporate a statement certifying this fact and bearing his or her seal of registration.

(c) Scope. An engineering plan shall be prepared for a phase of development not to exceed approximately five years of operating capacity, consistent with the development phases and design criteria defined in the facility plan. The engineering plan shall contain a report and a set of drawings, which consistently represent the engineering design.

(d) An engineering report must contain:

- (1) A summary of the facility design that includes:
 - (A) a discussion of the analytical methods used to evaluate the design;
 - (B) definition of the critical conditions evaluated and assumptions made;
 - (C) a list of technical references used in the evaluation; and
 - (D) completion of any applicable location restriction demonstrations in accordance with Rule .0536 of this Section;
- (2) A description of the materials and construction practices that conforms to the requirements set forth in Rule .0540 of this Section.

(3) A copy of the Design Hydrogeologic Report prepared in accordance with Paragraph (b) of Rule .0538 of this Section.

(e) Engineering drawings must clearly illustrate:

- (1) existing conditions: site topography, features, existing disposal areas, roads, and buildings;
- (2) grading plans: proposed limits of excavation, subgrade elevations, intermediate grading for partial construction;
- (3) stormwater segregation system, if required: location and detail of features;
- (4) cap system: base and top elevations, landfill gas devices, infiltration barrier, surface water removal, protective and vegetative cover, and details;
- (5) temporary and permanent sedimentation and erosion control plans;
- (6) vertical separation requirement estimates including:
 - (A) Cross-sections, showing borings, which indicate existing ground surface elevations, base grades, seasonal high ground-water level, estimated long term high ground-water level in accordance with Subparagraph (b)(2)(E) of Rule .0538 of this Section, and bedrock level in accordance with Subparagraph (b)(2)(F) of Rule .0538 of this Section; and
 - (B) A map showing the existing ground surface elevation and base grades. The map should include labeled boring locations which indicate seasonal high ground-water level, estimated long term high ground-water level in accordance with Subparagraph (b)(2)(E) of Rule .0538 of this Section, and bedrock level in accordance with Subparagraph (b)(2)(F) of Rule .0538 of this Section; and
- (7) Additional engineering features and details including, if proposed by owner, leachate collection system and base liner system. Leachate collection system and base liner system should be designed in accordance with NC Solid Waste Rules 15A NCAC 13B .1620 and .1621.

Authority G.S. 130A-294.

15A NCAC 13B .0540 CONSTRUCTION REQUIREMENTS FOR C&DLF FACILITIES

This Rule establishes the performance standards and minimum criteria for designing and constructing a C&DLF unit. Additional standards for the cap system are described in Rule .0543 of this Section.

- (1) Horizontal separation requirements.
 - (a) Property line buffer. New C&DLF unit(s) at a new facility shall establish

a minimum 200-foot buffer between the C&DLF unit and all property lines, for monitoring purposes. Existing, operating facilities shall maintain existing buffers and shall modify existing buffers when modifications are submitted or at the five-year review timeframe as outlined in Rule .0201(e) of this Subchapter.

- (b) Offsite residential structures and wells. All C&DLF units at a new facility shall establish a minimum 500-foot buffer between the C&DLF unit and existing residential structures and wells.
- (c) Surface waters. All C&DLF units at new facilities shall establish a minimum 50-foot buffer, or other additional buffers as required by Division of Water Quality, between the C&DLF unit and any stream, river, lake, pond or other waters of the state as defined in G.S.143-212.
- (d) Existing landfill units. A monitoring zone shall be established between a new C&DLF unit and any existing landfill units e.g. MSW, Industrial or Land Clearing and Inert Debris (LCID), in order to establish a ground-water monitoring system as set forth in Rule .0544 of this Section.

(2) Vertical separation requirements.

- (a) C&DLF unit(s) shall be constructed so that the post-settlement bottom elevation of waste is a minimum of four feet above the seasonal high ground-water table and bedrock datum plane contours established in the Design Hydrogeological Report prepared in accordance with Paragraph (b) of Rule .0538 of this Section.
- (b) Insitu or modified soils making up the upper two feet of separation as required by Subparagraph (2)(A) of this Paragraph, must consist of the following: SC, ML, CL, MH, and/or CH soils per Unified Soil Classification System or as specified in the approved construction plan.

(3) Survey control.

- (a) One permanent benchmark of known elevation measured from a U.S. Geological Survey benchmark shall be established and maintained for each 50 acres of developed landfill, or part thereof, at the landfill facility. This benchmark shall be the reference point for establishing vertical elevation control.

PROPOSED RULES

- (b) Latitude and Longitude shall be indicated at approximately the center of the facility.
- (4) Location coordinates. The North Carolina State Plane (NCSP) coordinates shall be established and one of its points shall be the benchmark of known NCSP coordinates.
- (5) Landfill subgrade. The landfill subgrade is the in-situ or modified soil layer(s), constructed embankments, and select fill providing the foundation for construction of the unit. The landfill subgrade shall be graded in accordance with the plans and specifications prepared in accordance to Rule .0539 of this Section, which are incorporated into the permit to construct in accordance with Paragraph (b) of Rule.0534 of this Section.
 - (a) The owner or operator of the C&DLF unit is required to have the subgrade inspected by a qualified geologist, when excavation is completed.
 - (b) The owner or operator of the C&DLF unit is required to notify the Division's hydrogeologist at least 24 hours before subgrade inspection.
 - (c) Compliance with the requirements of Subparagraph (a)(2)(B) of this Rule shall be in accordance with Paragraph (b) of Rule .0538 of this Section or by placement of soil in accordance with this Subparagraph or verified in accordance with Rule .0541 of this Section.
- (6) Special engineering structures. Engineering structures incorporated in the design and necessary to comply with the requirements of this Section shall be specified in the engineering plan. Material, construction, and certification requirements necessary to ensure that the structure is constructed in accordance with the design and acceptable engineering practices shall be included in the plans prepared in accordance with Rule .0539 of this Section.
- (7) Sedimentation and erosion control. Adequate structures and measures shall be designed and maintained to manage the run-on and run-off generated by the 24-hour, 25-year storm event, and conform to the requirements of the Sedimentation Pollution Control Law (15A NCAC 04) and any required NPDES permits.
- (8) Construction quality assurance (CQA) report. A CQA report shall be submitted in accordance with Rule .0541 of this Section.

tests that will be used before, during, and upon completion of construction to ensure that the construction and materials meet the design specifications and the construction and certification requirements set forth in Rule .0540 of this Section. The CQA plan must also describe the procedures to ensure that the integrity of the landfill systems will be maintained prior to waste placement.

(b) For construction of each cell, the CQA plan shall include, but not be limited to:

- (1) responsibilities and authorities. The plan shall establish responsibilities and authorities for the construction management organization. A pre-construction meeting shall be conducted prior to beginning construction of the initial cell, or as required by permit. The meeting shall include a discussion of the construction management organization, respective duties during construction, and periodic reporting requirements for test results and construction activities;
- (2) inspection activities. A description of all field observations, tests and equipment that will be used to ensure that the construction meets or exceeds all design criteria established in accordance with Rules .0539 and .0540 of this Section must be presented in the CQA plan;
- (3) sampling strategies. A description of all sampling protocols, sample size and frequency of sampling must be presented in the CQA plan; and
- (4) documentation. Reporting requirements for CQA activities must be described in detail in the CQA plan. Progress and troubleshooting meetings, daily and monthly, must be addressed in the plan and the contents of the meetings must be documented.

(c) Purpose of the CQA report. The CQA report shall contain results of all construction quality assurance and construction quality control testing including documentation of any failed test results, descriptions of procedures used to correct the improperly installed material and results of all retesting performed. The CQA report shall contain as-built drawings noting any deviation from the approved engineering plans and shall also contain a comprehensive narrative including but not limited to daily reports from the project engineer and a series of color photographs of major project features.

(d) For construction of each cell, the CQA report shall be submitted:

- (1) after completing landfill construction in order to qualify the constructed C&DLF unit for a permit to operate;
- (2) after completing construction of the cap system in accordance with the requirements of Rule .0543 of this Section; and
- (3) in accordance with the reporting schedule developed in accordance Subparagraph (b) of this Rule.
- (4) the CQA report shall bear the seal of the project engineer and a certification that construction was completed in accordance with:

Authority G.S.130A-294.

15A NCAC 13B .0541 CONSTRUCTION QUALITY ASSURANCE FOR C&DLF FACILITIES

(a) Purpose of construction quality control and quality assurance (CQA) plan. The CQA plan must describe the observations and

- (A) the CQA plan;
- (B) the conditions of the permit to construct;
- (C) the requirements of this Rule; and
- (D) acceptable engineering practices.

(e) The Division shall review the CQA report within 30 days of a complete submittal to ensure that the report meets the requirements of this Subparagraph of this Rule.

Authority G.S.130A-294.

15A NCAC 13B .0542 OPERATION PLAN AND REQUIREMENTS FOR C&DLF FACILITIES

(a) The owner or operator of a C&DLF unit shall maintain and operate the facility in accordance with the operation plan prepared in accordance with this Rule. The operation plan shall be submitted in accordance with Rule .0535 and of Rule .0534 (b)(2)(P) of this Section. Each phase of operation shall be defined by an area, which will contain approximately five years of disposal capacity.

(b) Operation Plan. The owner or operator of a C&DLF unit shall prepare an operation plan for each phase of landfill development. The plan shall include drawings and a report clearly defining the information as identified this Rule.

(1) Operation drawings. Drawings shall be prepared for each phase of landfill development. The drawings shall be consistent with the engineering plan and prepared in a format which is useable for the landfill operator. The operation drawings shall illustrate the following:

- (A) existing conditions, including the known limits of existing disposal areas;
- (B) progression of operation, including initial waste placement, daily operations, transition contours, and final contours;
- (C) stormwater controls for active and inactive subcells, if required;
- (D) special waste areas, e.g. asbestos disposal area, within the C&DLF unit;
- (E) buffer zones, noting restricted use;
- (F) stockpile and borrow operations; and
- (G) other solid waste units, e.g. tire disposal or storage, yard waste storage, white goods storage, recycling pads, etc.

(2) Operation Plan Description. The owner and operator of any C&DLF unit must maintain and operate the unit in accordance with the operation plan as described in Paragraphs (c) through (l) of this Rule.

(c) Waste Acceptance and Disposal Requirements.

(1) A C&DLF shall only accept those solid wastes which it is permitted to receive. The landfill owner or operator shall notify the Division within 24 hours of attempted disposal of any waste the C&DLF is not permitted to receive.

including waste from outside the area the landfill is permitted to serve.

(2) Asbestos waste shall be managed in accordance with 40 CFR 61, which is hereby incorporated by reference including any subsequent amendments and additions. Copies of 40 CFR 61 are available for inspection at the Department of Environment and Natural Resources, Division of Solid Waste. The regulated asbestos waste shall be covered immediately with soil in a manner that will not cause airborne conditions and must be disposed of separate and apart from other solid wastes, as shown on Operation drawings:

- (A) in a defined isolated area within the footprint of the landfill; or
- (B) in an area not contiguous with other disposal areas. Separate areas shall be clearly designated so that asbestos is not exposed by future land-disturbing activities.

(d) Wastewater treatment sludges may not be accepted for disposal. Wastewater treatment sludges may be accepted, with the approval of the Division, for utilization as a soil conditioner and incorporated into or applied onto the vegetative growth layer. The wastewater treatment sludges may in no case applied at greater than agronomic rates nor to a depth greater than six inches.

(e) Waste Exclusions. The following wastes shall not be disposed of in a C&DLF unit:

- (1) Containers such as tubes, drums, barrels, tanks, cans, and bottles unless they are empty and perforated to ensure that no liquid, hazardous or municipal solid waste is contained therein;
- (2) Garbage, as defined in G.S.130A-290(a)(7);
- (3) Hazardous waste, as defined in G.S.130A-290(a)(8), to also include hazardous waste from conditionally exempt small quantity generators;
- (4) Industrial solid waste;
- (5) Liquid wastes;
- (6) Medical waste, as defined in G.S.130A-290(a)(18);
- (7) Municipal solid waste, as defined in G.S.130A-290(a)(18a);
- (8) Polychlorinated biphenyls (PCB) wastes as defined in 40 CFR 761;
- (9) Radioactive waste, as defined in G.S. 104E-5(14);
- (10) Septage, as defined in G.S.130A-290(a)(32);
- (11) Sludge, as defined in G.S.130A-290(a)(34);
- (12) Special wastes, as defined in G.S.130A-290(a)(40);
- (13) White goods, as defined in G.S.130A-290(a)(44); and
- (14) Yard trash, as defined in G.S.130A-290(a)(45);
- (15) The following wastes cannot be received if separate from C&DLF waste: lamps or bulbs, including but not limited to halogen,

incandescent, neon or fluorescent; lighting ballast or fixtures; thermostats and light switches; batteries included but not limited to those from exit and emergency lights and smoke detectors; lead pipes; lead roof flashing; transformers and capacitors.

(f) Cover material requirements.

- (1) Except as provided in Subparagraph (3) of this Paragraph, the owners and operators of all C&DLF units must cover the solid waste with six inches of earthen material when the waste disposal area exceeds one-half acre and at least once weekly. Cover shall be placed at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Notation of date and time of cover shall be placed in the operating record.
- (2) Except as provided in Subparagraph (3) of this Paragraph, areas which will not have additional wastes placed on them for three months or more, but where final termination of disposal operations has not occurred, shall be covered and stabilized with vegetative ground cover or other stabilizing material as approved by the Division.
- (3) Alternative materials and/or an alternative thickness of cover may be approved by the Division if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. A C&DLF owner or operator may apply for approval of an alternative cover material. If approval is given by the Division, approval would extend to all C&DLF units at one specific facility.

(g) Spreading and Compacting requirements.

- (1) C&DLF units shall restrict solid waste into the smallest area feasible.
- (2) Solid waste shall be compacted as densely as practical into cells.
- (3) Appropriate methods such as fencing and diking shall be provided within the area to confine solid waste subject to be blown by the wind. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and disposed of properly by the owner and operator.

(h) Disease vector control. Owners and operators of all C&DLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment. For purposes of this Item, "disease vectors" means any rodents, flies, mosquitoes, or other animals or insects, capable of transmitting disease to humans.

(i) Air Criteria and Fire Control.

- (1) Owners and operators of all C&DLF units must ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or

promulgated by the U.S. EPA Administrator pursuant to Section 110 of the Clean Air Act, as amended.

- (2) Open burning of solid waste, except for the infrequent burning of land clearing debris generated on site or debris from emergency clean-up operations, is prohibited at all C&DLF facilities. The Division must approve any such infrequent burning.
- (3) Equipment shall be provided to control accidental fires and arrangements shall be made with the local fire protection agency to immediately provide fire-fighting services when needed.
- (4) Fires and explosions that occur at a C&DLF require verbal notice to the Division within 24 hours and written notification within 15 days. Written notification shall include the suspected cause of fire or explosion and the action(s) to be taken to prevent future occurrence of fire or explosion.

(j) Access and safety requirements.

- (1) The C&DLF shall be adequately secured by means of gates, chains, berms, fences and other security measures approved by the Division to prevent unauthorized entry.
- (2) In accordance with G.S.130A-309.25, an individual trained in landfill operations shall be on duty at the site while the facility is open for public use to ensure compliance with operational requirements.
- (3) The access road to the site and access roads to monitoring locations shall be of all-weather construction and maintained in good condition.
- (4) Dust control measures shall be implemented.
- (5) Signs providing information on disposal procedures, the hours during which the site is open for public use, the permit number and other pertinent information specified in the permit conditions shall be posted at the site entrance.
- (6) Signs shall be posted which at a minimum lists liquid, hazardous and municipal solid waste as being excluded from the C&DLF unit.
- (7) Traffic signs or markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions.
- (8) The removal of solid waste from a C&DLF is prohibited unless the unit has included in its operational plan a recycling program, which has been approved by the Division. The general public is prohibited from removal activities on the working face.

(k) Erosion and sedimentation control requirements.

- (1) Adequate sediment control measures (vegetative cover, materials, structures or devices), shall be utilized to prevent sediment from leaving the C&DLF facility.
- (2) Adequate sediment control measures (vegetative cover, materials, structures or

- devices), shall be utilized to prevent excessive on-site erosion of the C&DLF facility or unit.
- (3) Provisions for a vegetative ground cover sufficient to restrain erosion must be accomplished as directed by the approved erosion and sedimentation control approval letter issued by the appropriate state or local agency, upon completion of any phase of C&DLF development consistent with .0543(c)(5) of this Section.

(l) Drainage control and water protection requirements.

- (1) Surface water shall be diverted from the operational area.
- (2) Surface water shall not be impounded over or in waste.
- (3) Solid waste shall not be disposed of in water.
- (4) Leachate shall be contained on site or properly treated prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters.
- (5) C&DLF units shall not:
- (A) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402.
- (B) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act, as amended.

(m) Survey for Compliance. Within 60 days of the permittee's receipt of the Division's written request, the permittee shall cause to be conducted a survey of active or closed portions of unit or units at the facility in order to determine if operations are being conducted in accordance with the approved design and operational plans. The permittee shall report the results of such survey to the Division within 90 days of receipt of the Division's request.

- (1) A survey shall be required by the Division:
- (A) If there is reason to believe that operations are being conducted in a manner that deviates from the plan listed in the effective permit; or
- (B) As a periodic verification (but no more than annual) that operations are being conducted in accordance with the plan listed in the effective permit.
- (2) Any survey performed pursuant to this Subparagraph shall be performed by a registered land surveyor duly authorized under North Carolina law to conduct such activities.

(n) Recordkeeping requirements.

- (1) The owner and operator of a C&DLF unit must record and retain at the facility, or an alternative location near the facility approved by the Division, in an operating record the following information as it becomes available:
- (A) records of random waste inspections, monitoring results, certifications of training, and training procedures required by Rule .0544 of this Section;
- (B) amounts by weight of solid waste received at the facility to include county of generation;
- (C) any demonstration, certification, finding, monitoring, testing, or analytical data required by Rules .0544 through .0545 of this Section;
- (D) any closure or post-closure monitoring, testing, or analytical data as required by Rule .0543 of this Section;
- (E) any cost estimates and financial assurance documentation required by Rule .0546 of this Section;
- (F) notation of date and time of placement of cover material; and
- (G) all audit records, compliance records and inspection reports.
- (2) All information contained in the operating record must be furnished to the Division according to permit or upon request, or be made available for inspection by the Division.
- (3) A copy of the approved operation plan required by Rule .0542 of this Section and/or engineering plan required by Rule .0539 of this Section.
- (4) A copy of the current Permit to Construct and Permit to Operate.
- (5) The Monitoring Plan, in accordance with Rule .0544 of this Section, included as appendices to the Operation Plan.

Authority G.S.130A-294.

15A NCAC 13B .0543 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR C&DLF FACILITIES

(a) Purpose. This Rule establishes criteria for the closure of all C&DLF units and subsequent requirements for post-closure compliance. The owner and operator shall develop specific plans for the C&DLF facility or units.

(b) Scope.

- (1) Closure. Standards are established for the scheduling and documenting closure of all C&DLF units, and designing the cap system. Construction requirements for the cap system incorporate requirements from Rule .0540 of this Section.
- (2) Post-closure. Standards are established for the monitoring and maintenance of the C&DLF unit(s) following closure.

(c) Closure criteria.

- (1) C&DLF units shall install a cap system that is designed to minimize infiltration and erosion. The cap system shall be designed and constructed to:
 - (A) have a permeability less than or equal to soils underlying the landfill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than 1.0 x 10⁻⁵ cm/sec, whichever is less;
 - (B) minimize infiltration through the closed C&DLF unit by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and
 - (C) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains a minimum of 18 inches of earthen material that is capable of sustaining native plant growth.
- (2) The Division may approve an alternative cap system if the owner or operator can adequately demonstrate the following:
 - (A) the alternative cap system will achieve an equivalent or greater reduction in infiltration as the low-permeability barrier specified in Subparagraph (1) of this Paragraph; and
 - (B) the erosion layer will provide equivalent or improved protection as the erosion layer specified in Subparagraph (3) of this Paragraph.
- (3) Construction of the cap system for all C&DLF units shall conform to the plans prepared in accordance with Paragraphs (g) of Rule .0540 of this Section and the following requirements:
 - (A) post-settlement surface slopes shall be a minimum of 5 percent and a maximum of 25 percent; and
 - (B) a gas venting or collection system shall be installed below the low-permeability barrier to minimize pressures exerted on the barrier.
- (4) Prior to beginning closure of each C&DLF unit as specified in Subparagraph (5) of this Paragraph, an owner and operator shall notify the Division that a notice of the intent to close the unit has been placed in the operating record.
- (5) The owner and operator shall begin closure activities of each C&DLF unit:
 - (A) No later than 30 days after the date on which the C&DLF unit receives the known final receipt of wastes; or
 - (B) If the C&DLF unit has remaining capacity and there is a reasonable likelihood that the C&DLF unit will receive additional wastes, than
 - (C) closure activities should begin no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the Division if the owner or operator demonstrates that the C&DLF unit has the capacity to receive additional wastes and the owner and operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed C&DLF unit; or
 - (C) No later than 30 days after the date that waste is within 10% of final design grades and the unclosed waste area exceeds 10 acres.
- (6) The owner and operator of all C&DLF units shall complete closure activities of each C&DLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in Subparagraph (5) of this Paragraph. Extensions of the closure period may be granted by the Division if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and they have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed C&DLF unit.
- (7) Following closure of each C&DLF unit, the owner and operator shall notify the Division that a certification, signed by the project engineer verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.
- (8) Recordation.
 - (A) Following closure of all C&DLF units, the owner and operator shall record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the Division that the notation has been recorded and a copy has been placed in the operating record.
 - (B) The notation on the deed shall in perpetuity notify any potential purchaser of the property that:
 - (i) the land has been used as a C&DLF facility; and
 - (ii) its use is restricted under the closure plan approved by the Division.
- (9) The owner or operator may request permission from the Division to remove the notation from the deed if all wastes are removed from the facility.
- (d) Closure plan contents.
 - (1) General content of the plan. The owner and operator shall prepare a written closure plan

that describes the steps necessary to close all C&DLF units at any point during its active life in accordance with the cap system requirements in Paragraph (c) of this Rule, as applicable. The closure plan, at a minimum, must include the following information:

- (A) a description of the cap system and the methods and procedures to be used to install the cap that conforms to the requirements set forth in Paragraph (c) of this Rule;
- (B) an estimate of the largest area of the C&DLF unit ever requiring the specified cap system at any time during the active life that is consistent with the drawings prepared for:

 - (i) the operation plan, for an existing C&DLF unit; or
 - (ii) the engineering plan or facility plan, for a lateral expansion or new C&DLF unit;
- (C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility;
- (D) A schedule for completing all activities necessary to satisfy the closure criteria set forth in Paragraph (c) of this Rule; and
- (E) Financial Assurance. The owner and operator shall submit the cost estimate for closure required under Rule .0546 of this Section as a component of the plan.

(e) Post-closure criteria.

- (1) Following closure of each C&DLF unit, the owner and operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, except as provided under Subparagraph (2) of this Paragraph, and consist of at least the following:

 - (A) maintaining the integrity and effectiveness of any cap system, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap system;
 - (B) monitoring the ground water and surface water in accordance with the requirements of Rules .0544 through .0545 of this Section and maintaining the ground-water monitoring system, if applicable; and
 - (C) maintaining and operating the gas monitoring system in accordance with the requirements of Rule .0544 of this Section; and
 - (D) maintaining, operating and decommissioning the leachate

collection system, if present in accordance with the requirements of Rule .0544 of this Section. The Division may allow the owner and operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment.

- (2) The length of the post-closure care period may be:

 - (A) decreased by the Division if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the Division; or
 - (B) increased by the Division if the Division determines that the lengthened period is necessary to protect human health and the environment.
- (3) Following completion of the post-closure care period for each C&DLF unit, the owner and operator shall notify the Division that a certification, signed by a registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record.
- (f) Post-closure plan contents. The owner and operator of all C&DLF units must prepare a written post-closure plan that includes, at a minimum, the following information:

 - (1) a description of the monitoring and maintenance activities required for each C&DLF unit, and the frequency at which these activities shall be performed;
 - (2) name, address, and telephone number of the person or office to contact about the facility during the post-closure period;
 - (3) a description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this Section. The Division may approve any other disturbance if the owner or operator demonstrates that disturbance of the cap system, base liner system, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment; and
 - (4) financial Assurance. The owner and operator shall submit the cost estimate for post-closure required under Rule .0546 of this Section as a component of the plan.

Authority G.S.130A-294.

15A NCAC 13B .0544 MONITORING PLANS AND REQUIREMENTS FOR C&DLF FACILITIES

(a) A Monitoring Plan shall be submitted that contains the following information and shall apply to all C&DLF units. The Monitoring Plan shall be prepared in accordance with this Rule.

(b) Ground-water monitoring plan. A ground-water monitoring plan including information on the proposed ground-water monitoring system(s), sampling and analysis requirements, and detection monitoring requirements that fulfills the requirements of Subparagraph (1)(A) through 1(E) of this Paragraph.

(1) A ground-water monitoring system shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the aquifer that:

(A) Represent the quality of the background ground water that has not been affected by leakage from the unit. Normally, determination of background water quality will be based on sampling of a well or wells that are hydraulically upgradient of the waste management area. However, the determination of background water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

- (i) Hydrogeologic conditions do not allow the owner and operator to determine which wells are hydraulically upgradient; or
- (ii) Hydrogeologic conditions do not allow the owner and operator to place a well in a hydraulically upgradient location; or
- (iii) Sampling at other wells will provide an indication of background ground-water quality that is as representative as that provided by the upgradient well(s); and

(B) Represent the quality of ground water passing the relevant point of compliance as approved by the Division. The downgradient monitoring system shall be installed at the relevant point of compliance so as to ensure detection of ground-water contamination in the uppermost aquifer.

(i) The relevant point of compliance shall be established no more than 250 feet from a waste boundary, or shall be at least 50 feet within the facility property boundary,

whichever point is closer to the waste boundary.

(ii) In determining the relevant point of compliance, the Division shall consider recommendations made by the owner and operator based upon consideration of at least the following factors:

- (I) The hydrogeologic characteristics of the facility and surrounding land;
- (II) The quantity, quality, and direction, of flow of ground water;
- (III) The proximity and withdrawal rate of the ground-water users;
- (IV) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;
- (V) Public health, safety, and welfare effects; and
- (VI) Practicable capability of the owner and operator.

(C) The ground-water monitoring programs shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells. The plan shall include procedures and techniques for:

- (i) sample collection;
- (ii) sample preservation and shipment;
- (iii) chain of custody control; and
- (iv) quality assurance and quality control.

(D) The ground-water monitoring programs shall include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure

hazardous constituents and other monitoring parameters in ground-water samples. Monitoring programs include the detection monitoring program and the assessment monitoring program.

(i) Detection monitoring program. Detection monitoring is required at C&DLF units at all ground-water monitoring wells that are part of the detection monitoring system as established in the approved monitoring plan.

(I) At a minimum, the detection monitoring program shall include monitoring for include the constituents listed in Appendix I of 40 CFR Part 258, specific conductance, pH, temperature, Alkalinity, Total Dissolved Solids, RCRA metals, Chloride, Manganese, Sulfate, Iron, and Tetrahydrofuran.

(II) The monitoring frequency for all detection monitoring constituents shall be at least semiannual during the remaining life of the facility, including closure and the post-closure period. A minimum of one sample from each well (background and downgradient) shall be collected and analyzed for the constituents before waste placement in each cell or phase. This initial preoperational sample may be considered as one of the eight quarterly samples.

At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semiannual sampling events.

(III) The Classifications and Water Quality Standards Applicable to the Groundwaters of North Carolina (15A NCAC 02L) are incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment and Natural Resources or on the Department website.

(ii) Assessment Monitoring Program. Assessment monitoring is required if one or more constituents, as listed in Subparagraph (1)(A) of this Paragraph are detected above the current ground-water quality standards in accordance with 15A NCAC 02L .0202, in any sampling event. In this event, the owner and operator shall within 30 days of this finding, submit a report to the Division, place a notice in the operating record, and notify all appropriate local government officials. The owner and operator shall also:

(I) Characterize the nature and extent of the release by installing additional monitoring wells, as necessary;

(II) Install at least one additional monitoring well at the facility

- boundary or the compliance boundary, as defined in 15A NCAC 02L .0100, in the direction of contaminant migration;
- (III) Notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site or thought to have migrated off site;
- (IV) Analyze for additional parameters as directed by the Division.
- (E) The sampling procedures and frequency shall be protective of human health and the environment.
- (F) Ground-water elevations shall be measured in each well immediately prior to purging, each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area shall be measured within a 24 hour period of time to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.
- (i) In order to accurately determine ground-water elevations for each monitoring well, the wells shall have been accurately surveyed by a North Carolina Registered Land Surveyor. The survey of the wells shall conform to at least the following levels of accuracy:
- (I) The horizontal location to the nearest 0.1 foot.
- (II) The vertical control for the ground surface elevation to the nearest 0.01foot.
- (III) The vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 foot.
- (ii) In order to determine the rate of ground-water flow, the owner and operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.
- (G) The owner and operator shall establish existing conditions of ground-water quality in hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the C&DLF unit.
- (H) Within 120 days of completing the ground-water sampling event, the owner and operator shall submit to the Division a report that includes information from the sampling event; including field observations relating to the condition of the monitoring wells, field data, summary of the laboratory data, field sampling quality assurance and quality control data, information on ground-water flow direction, ground-water flow rate, for each well with constituents that exceed ground-water standards over background levels, and any other pertinent information related to the sampling event.
- (I) The owner or operator may demonstrate that a source other than the C&DLF unit or a natural variation in ground-water quality has caused contamination, or an error in sampling and/or analysis of data has resulted in false reporting of contamination. A report documenting this demonstration shall be certified by a Licensed Geologist or Professional Engineer and approved by the Division. A copy of the approved report shall also be placed in the operating record.
- (2) Monitoring wells shall be designed and constructed in accordance with the applicable North Carolina Well Construction Standards as codified in 15A NCAC 02C.
- (A) owner and operators shall obtain approval from the Division for the design, installation, development, and decommission of any monitoring well or piezometer. Documentation shall be placed in the operating record and provided to the Division in a timely manner.

- (B) the monitoring wells and piezometers shall be operated, and maintained, and are accessible so that they perform to design specifications throughout the life of the monitoring program.
- (3) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include investigation of:
 - (A) aquifer thickness, ground-water flow rate, and ground-water flow direction, including seasonal and temporal fluctuations in ground-water flow; and
 - (B) unsaturated and saturated geologic units (including fill materials) overlying and comprising the uppermost aquifer; including but not limited to thickness, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.
- (4) The Division may require or allow the use of alternative monitoring systems in addition to ground-water monitoring wells at sites:
 - (A) where the owner and operator does not control the property from any landfill unit to the ground-water discharge feature(s); or
 - (B) sites with hydrogeologic conditions favorable to detection monitoring by alternative methods.
- (5) Owners and operators of C&DLF units shall comply with the ground-water monitoring, assessment, and corrective action requirements under Rules .0544 through .0545 of this Section according to the following schedule:
 - (A) new C&DLF units shall be in compliance with the requirements before waste can be placed in the unit; and
 - (B) lateral expansions to existing C&DLF units shall be in compliance with the requirements before waste can be placed in the expansion area.
- (c) Surface water monitoring plan. The Surface Water Monitoring System shall be as follows:
 - (1) The Division shall require a solid waste management facility to provide such surface water monitoring capability as the Division determines to be necessary to detect the effects of the facility on surface water in the area. In making such a determination, the Division shall consider the following factors:
 - (A) the design of the facility, the nature of the process it will use, and the type of waste it will handle;
 - (B) drainage patterns and other hydrological conditions in the area;
 - (C) proximity of surface water to the facility;
 - (D) uses that are being or may be made of any surface water that may be affected by the facility; and
 - (E) any other factors that reasonably relate to the potential for surface water effects from the facility.
 - (2) Responsibility for sample collection and analysis will be defined as a part of the monitoring plan.
 - (d) Gas control plan.
 - (1) Owners and operators of all C&DLF units must ensure that:
 - (A) the concentration of methane gas or other explosive gases generated by the facility does not exceed 25 percent of the lower explosive limit in on-site facility structures (excluding gas control or recovery system components);
 - (B) the concentration of methane gas or other explosive gases does not exceed the lower explosive limit for methane or other explosive gases at the facility property boundary; and
 - (C) the concentration of methane gas or other explosive gases generated by the facility does not exceed zero percent of the lower explosive limit for the gas in offsite structures.
 - (2) Owners and operators of all C&DLF units must implement a routine methane monitoring program to ensure that the standards of Subparagraph (3)(A) of this Paragraph are met.
 - (A) The type and frequency of monitoring must be determined based on the following factors:
 - (i) soil conditions;
 - (ii) the hydrogeologic conditions under and surrounding the facility;
 - (iii) the hydraulic conditions on and surrounding the facility;
 - (iv) the location of facility structures and property boundaries;
 - (v) the location of all off-site structures adjacent to property boundaries; and
 - (B) The frequency of monitoring shall be quarterly or as approved by the Division.
 - (3) If methane gas levels exceeding the limits specified in Subparagraph (d)(1)(A) of this Rule are detected, the owner and operator must:
 - (A) immediately take all necessary steps to ensure protection of human health and notify the Division;
 - (B) within seven days of detection, place in the operating record the methane

gas levels detected and a description of the steps taken to protect human health;

(C) within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Division that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy; and

(D) based on the need for an extension demonstrated by the operator, the Division may establish alternative schedules for demonstrating compliance with Subparagraphs (3)(B) and (3)(C) of this Rule.

(4) For purposes of this Item, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 C and atmospheric pressure.

(d) A waste acceptability program. Owners and operators of all C&DLF units must implement a program at the facility for detecting and preventing the disposal of industrial, hazardous, liquid, municipal solid waste and excluded wastes in accordance with the Operating Plan or the effective permit. This program must include, at a minimum:

- (1) random inspections of incoming loads or other comparable procedures;
- (2) records of any inspections;
- (3) training of facility personnel to recognize commercial/industrial, hazardous, liquid and municipal and excluded waste; and
- (4) development of a contingency plan to properly manage any identified commercial/industrial, hazardous, liquid, municipal or excluded waste. The plan must address identification, removal, storage and final disposition of the waste.

(e) Any other monitoring plan or program which is necessary according to the Operating Plan or the effective permit.

(f) Monitoring plans shall be prepared under the responsible charge of and bear the seal of a Licensed Geologist or Professional Engineer in accordance with G.S.89E and 89C, respectively.

(g) Monitoring plans shall be certified by a Licensed Geologist or Professional Engineer to be effective in providing early detection of any release of hazardous constituents from any point in a disposal cell or leachate surface impoundment to the uppermost aquifer, air, surface waters, or proximal area, so as to be protective of public health and the environment.

(h) Monitoring plans shall be approved by the Division and a copy of the monitoring plan shall be placed in the operating record.

(i) Once established at a C&DLF facility, all monitoring shall be conducted throughout the active life and post-closure care period for all C&DLF units.

15A NCAC 13B .0545 ASSESSMENT AND CORRECTIVE ACTION PROGRAM FOR C&DLF FACILITIES AND UNITS

(a) The owner and operator shall continue to monitor in accordance with the approved assessment monitoring program.

(b) Assessment of Corrective Actions. The assessment of corrective measures shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under this Rule addressing at least the following:

- (1) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
- (2) the time required to begin and to complete the remedy;
- (3) the costs of remedy implementation; and
- (4) the institutional requirements such as State and Local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

The owner and operator shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties. The owner and operator shall provide a public notice of the meeting at least 30 days prior to the meeting. The notice shall include the time, place, date, and purpose of the meeting required by this Paragraph of this Rule. A copy of the public notice shall be forwarded to the Division at least five days prior to publication. The owner and operator shall mail a copy of the public notice to those persons requesting notification. Public notice shall include: a legal advertisement placed in the newspaper or newspapers serving the county; and provision of a news release to at least one newspaper, one radio station, and one television station serving the county.

(c) Selection of Remedy. Based on the results of the corrective measures assessment, the owner and operator shall select a remedy that, at a minimum, meets the standards listed in Subparagraph (2) of this Paragraph.

- (1) Within 30 days of selecting a remedy, the permittee shall submit an application to modify the permit describing the selected remedy to the Division for evaluation and approval. The application shall be subject to the processing requirements set forth in Rule .0534(c) of this Section. The application shall include the demonstrations necessary to comply with the financial assurance requirements set forth in accordance with Rule .0546 of this Section.
- (2) Remedies shall:
 - (A) be protective of human health and the environment;
 - (B) attain the approved ground-water protection standards;
 - (C) control the source(s) of releases so as to reduce or eliminate, to the

Authority G.S 130A-294.

- maximum extent practicable, further releases of constituents into the environment that may pose a threat to human health or the environment; and
- (D) comply with standards for management of wastes as specified in Paragraph (h) of this Rule.
- (3) In selecting a remedy that meets the standards of Subparagraph (c)(2) of this Rule, the owner and operator shall consider the following evaluation factors:
- (A) The long-term and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:
- (i) magnitude of reduction of existing risks;
- (ii) magnitude of residual risks in terms of likelihood of further releases due to wastes remaining following implementation of a remedy;
- (iii) the type and degree of long-term management required, including monitoring, operation, and maintenance;
- (iv) short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
- (v) time until full protection is achieved;
- (vi) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
- (vii) long-term reliability of the engineering and institutional controls; and
- (viii) potential need for replacement of the remedy.
- (B) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:
- (i) the extent to which containment practices will reduce further releases; and
- (ii) the extent to which treatment technologies may be used.
- (C) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:
- (i) degree of difficulty associated with constructing the technology;
- (ii) expected operational reliability of the technologies;
- (iii) need to coordinate with and obtain necessary approvals and permits from other agencies;
- (iv) availability of necessary equipment and specialists; and
- (v) available capacity and location of needed treatment, storage, and disposal services.
- (D) Practicable capability of the owner and operator, including a consideration of the technical and economic capability.
- (4) The owner and operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. This schedule shall be approved by the Division. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in this Rule. The owner and operator shall consider the following factors in determining the schedule of remedial activities:
- (A) extent and nature of contamination;
- (B) practical capabilities of remedial technologies in achieving compliance with the approved ground-water protection standards and other objectives of the remedy;
- (C) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (D) desirability of utilizing technologies that are not currently available, but which may offer advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (E) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

- (F) resource value of the aquifer including:
 - (i) current and future uses;
 - (ii) proximity and withdrawal rate of users;
 - (iii) ground-water quantity and quality;
 - (iv) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to contaminants;
 - (v) the hydrogeologic characteristics of the facility and surrounding land;
 - (vi) ground-water removal and treatment costs; and
 - (vii) the costs and availability of alternative water supplies;
- (G) practical capability of the owner and operator; and
- (H) other relevant factors.

(d) A determination by the Division pursuant to Paragraph (d) of this Rule shall not affect the authority of the State to require the owner and operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate ground water to concentrations that are technically practicable and reduce threats to human health or the environment.

(e) Implementation of the Corrective Action Program. Based on the approved schedule for initiation and completion of remedial activities, the owner or operator shall:

- (1) Establish and implement a corrective action ground-water monitoring program that:
 - (A) at a minimum, meets the requirements of an assessment monitoring program under Paragraph (a) and (b) of this Rule;
 - (B) indicates the effectiveness of the corrective action remedy; and
 - (C) demonstrates compliance with ground-water protection standards pursuant to Paragraph (i) of this Rule.
- (2) Implement the approved corrective action remedy; and
- (3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner and operator in determining whether interim measures are necessary:
 - (A) time required to develop and implement a final remedy;
 - (B) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

- (C) actual or potential contamination of drinking water supplies or sensitive ecosystems;
- (D) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;
- (E) weather conditions that may cause hazardous constituents to migrate or be released;
- (F) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
- (G) other situations that may pose threats to human health or the environment.

(f) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Subparagraph (c)(2) of this Rule are not being achieved through the remedy selected. In such cases, the owner and operator shall implement other methods or techniques, as approved by the Division, that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under Paragraph (g) of this Rule.

(g) If the owner or operator determines that compliance with requirements Subparagraph (c)(2) of this Rule cannot be practically achieved with any currently available methods, the owner and operator shall:

- (1) obtain certification of a Licensed Geologist or Professional Engineer and approval from the Division that compliance with the requirements under Subparagraph (c)(2) of this Rule cannot be practically achieved with any currently available methods;
- (2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and
- (3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:
 - (A) technically practicable; and
 - (B) consistent with the overall objective of the remedy.
- (4) Submit a report justifying the alternative measures to the Division for approval prior to implementing the alternative measures. Upon approval by the Division, this report shall be placed in the operating record.

(h) All solid wastes that are managed pursuant to a remedy required under Paragraph (c) and (d) of this Rule, or an interim measure required under Paragraph (e) of this Rule, shall be managed in a manner:

- (1) that is protective of human health and the environment; and
- (2) that complies with applicable RCRA requirements.

(i) Remedies selected pursuant to Paragraph (c) and (d) of this Rule shall be considered complete when:

- (1) the owner and operator complies with the approved ground-water protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance;
- (2) compliance with the approved ground-water protection standards has been achieved by demonstrating that concentrations of constituents have not exceeded these standards for a period of three consecutive years, consistent with performance standards in Subparagraph (c)(2) of this Rule; and
- (3) all actions required to complete the remedy have been satisfied.

(j) Upon completion of the remedy, the owner and operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (i) of this Rule. This report shall be signed by the owner and by a Licensed Geologist or Professional Engineer. Upon approval by the Division, this report shall be placed in the operating record.

(k) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (i) of this Rule, the owner and operator shall be released from the requirements for financial assurance for corrective action under Rule .0546 of this Section at the end of post-closure.

Authority G.S. 30A-294.

15A NCAC 13B .0546 FINANCIAL RESPONSIBILITY REQUIREMENTS FOR C&DLF FACILITIES AND UNITS

(a) Owners and operators of C&DLF facilities and units shall provide proof of financial responsibility in accordance with the financial responsibility for landfills adopted pursuant to G.S.130A-294(b) and 130A-309.27.

(b) Owners and operators of C&DLF facilities and units permitted under these Rules shall provide proof of financial responsibility to ensure closure of the site in accordance with these Rules and to cover closure and post-closure of the landfill. Financial responsibility may be demonstrated through surety bonds, insurance, letters of credit, a funded trust, or local government financial test. Documentation of financial responsibility shall be kept current, and updated annually as required by changes in these Rules, changes in operation of the site, and inflation.

(c) Owners and operators of C&DLF facilities and units shall demonstrate the following minimum amounts of financial responsibility for Closure and Post-Closure care:

- (1) The owner and operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the entire area of all C&DLF units at any time during the active life in accordance with the closure plan required under Rule .0543 of this Section. A copy of the closure cost estimate shall be placed in the C&DLF's closure plan and the operating record.
 - (A) The cost estimate shall equal the cost of closing the entire area of all C&DLF units at any time during the

active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan as set forth in Rule .0543 of this Section.

(B) During the active life of the C&DLF, the owner and operator shall annually adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the closure cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(C) The owner and operator shall increase the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes to the closure plan or C&DLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the C&DLF unit. Prior to any reduction of the closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the C&DLF's operating record.

(2) The owner or operator of each C&DLF unit(s) shall establish financial assurance for closure of the C&DLF unit in compliance with Paragraph (a) of this Rule. The owner and operator shall provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with Rule .0543 of this Section for final closure certification.

(3) The owner and operator shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the C&DLF unit(s) in compliance with the post-closure plan developed under Rule .0543 of this Section. The post-closure cost estimate used to demonstrate financial

assurance in Subparagraph (2) of this Paragraph shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period and be placed in the operating record.

(A) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the C&DLF unit(s) and during the post-closure care period, the owner and operator shall annually adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s). For owners and operators using the local government financial test, the post-closure cost estimate shall be updated for inflation within 30 days after the close of the local government's fiscal year and before submission of updated information to the Division.

(C) The owner and operator shall increase the post-closure care cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the post-closure plan or C&DLF unit(s) conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. Prior to any reduction of the post-closure cost estimate by the owner or operator, a written justification for the reduction shall be submitted to the Division. No reduction of the post-closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval shall be placed in the C&DLF's operating record.

(4) The owner and operator of each C&DLF unit(s) shall establish, in a manner in accordance with Paragraph (a) of this Rule, financial assurance for the costs of post-closure care as required under Rule .0543 of this Section. The owner and operator shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with Rule .0543 of

this Section. Maintenance of financial responsibility in the required amounts in Subparagraphs (c)(1) and(c)(2) of this Rule does not in any way limit the responsibility of owners and operators for the full costs of site closure and clean-up, the expenses of any on-site or off-site environmental restoration necessitated by activities at the site, and liability for all damages to third parties or private or public properties caused by the establishment and operation of the site.

Authority G.S. 130A-294.

15A NCAC 13B .0547 EXISTING C&DLF UNITS AS OF JULY 1, 2004

(Effective until January 1, 2008) An owner and operator of an existing C&DLF unit(s), those receiving waste prior to July 1, 2004, shall close or submit an application document according to the criteria and scheduling requirements set forth in this Paragraph. All C&DLF unit(s) shall conform to the specific conditions set forth in the permit and the following general provisions. Nothing in this Rule shall be construed to limit the conditions the Division may impose on a permit.

(1) Closure of existing C&DLF unit(s), C&DLF unit(s), which did not and will not receive solid waste after July 1, 2004, shall comply with the Solid Waste Permit, the Conditions of Permit, and Rule .0510 of this Section.

(2) Financial Assurance for existing C&DLF facilities and units. Owners and operators of existing C&DLF facilities and units, including C&DLF units atop closed MSWLF units shall submit the following by December 31, 2004:

(a) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section; and

(b) financial responsibility in accordance with Rule .0546 of this Section.

(3) Application for a Permit to Construct a new phase of an existing C&DLF facility or unit shall be subject to the following. An owner and operator of an existing C&DLF shall submit an application 120 days prior to the expiration date of the effective permit to operate or at least 180 days prior to the date scheduled for constructing a phase of landfill development not approved in the effective permit to operate, whichever occurs first.

(a) a facility plan defines comprehensive development of the property. The plan includes a set of drawings and a report which present the long-term, general design concepts related to construction, operation, and closure of the C&DLF unit(s). The scope of the plan spans the active life of the unit(s). A facility plan shall be prepared in accordance with Subparagraphs (d)(1), (e)(1), (e)(2), and (e)(3) of Rule .0537 of this

PROPOSED RULES

Section. Additional solid waste management activities located at the C&DLF facility shall be identified in the plan and shall meet the requirements of this Subchapter. The facility plan defines the waste stream proposed for management at the C&DLF facility. If different types of landfill units or non-disposal activities are included in the facility design, the plan must describe general waste acceptance procedures. The areal limits of the C&DLF unit(s), total capacity of the C&DLF unit(s), and the proposed waste stream shall be in accordance with the current permit for an existing facility applying for a Permit to Construct a new phase not approved in the current permit;

- (b) an engineering plan that is prepared for the initial phase of landfill development prepared in accordance with Rule .0539 of this Section;
- (c) a construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
- (d) an operation plan prepared in accordance with Rule .0542 of this Section, with an appended monitoring plan according with Rule .0544 of this Section;
- (e) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section; and
- (f) transition plan for an existing C&DLF unit atop closed MSWLF units. Owners and operators of existing C&DLF units atop closed MSWLF units shall submit a transition plan on or before December 31, 2004 that contains an operation plan prepared in accordance with Rule .0542 of this Section and the existing permit. The operation drawings shall illustrate the transition contours. The plan shall define the continued operation of the existing C&DLF unit atop a closed MSWLF unit until its closure, and incorporate a closure date for the existing C&DLF atop a closed MSWLF unit on or before January 1, 2008.

Board of Trustees for the TSERS intends to adopt the rules cited as 20 NCAC 02O .0101-.0103.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: January 28, 2004

Time: 2:30 p.m.

Location: Room 100, Albemarle Building, 325 Salisbury St, Raleigh, NC

Reason for Proposed Action: *The Department of State Treasurer and the Board of Trustees are charged with the administration of the Disability Income Plan of North Carolina which provides short-term and long-term disability benefits to teachers and state employees. The 2003 Session of the General Assembly radically changed the definition of disability for the purposes of entitlement to short-term and long-term disability benefits. Unfortunately, the newly enacted definitions are not clear and a number of questions have arisen as to how these definitions should be applied. The proposed rules are necessary to clarify these definitions and will permit their implementation.*

Procedure by which a person can object to the agency on a proposed rule: *Any person who objects to a proposed rule may send written comments to Marshall Barnes, Deputy Director – Operations, Department of State Treasurer, Retirement Systems Division, 325 N. Salisbury St., Raleigh, NC 27603 or submit written comments at the public hearing.*

Written comments may be submitted to: *Marshall Barnes, Deputy Director – Operations, Department of State Treasurer, Retirement Systems Division, 325 N. Salisbury St., Raleigh, NC 27603, (919) 508-5377, fax (919) 508-1022, and email marshall.barnes@treasurer.state.nc.us.*

Comment period ends: February 13, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: *Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.*

Fiscal Impact

- State**
- Local**
- Substantive (≥\$3,000,000)**
- None**

Authority G.S. 130A-294.

TITLE 20 – DEPARTMENT OF STATE TREASURER

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of State Treasurer, Retirement Systems Division,

CHAPTER 02 - RETIREMENT SYSTEMS

SUBCHAPTER 02O – DISABILITY INCOME PLAN OF NORTH CAROLINA

SECTION .0100 – GENERAL ADMINISTRATION

20 NCAC 02O .0101 SCOPE

These Rules apply to the administration of the Disability Income Plan of North Carolina.

Authority G.S. 135-102(c).

20 NCAC 02O .0102 SHORT-TERM DISABILITY

(a) A participant shall be entitled to short-term disability benefits if the participant meets the eligibility requirements pursuant to G.S. 135-105(a).

(b) "Any other jobs available with the State" is defined as jobs in which:

- (1) the minimum experience, training, and education requirements are comparable with the minimum experience, training and education requirements of the position currently held by the participant;
- (2) is within the same employer (State agency, University, Community College, or public school system);
- (3) is offered by the employer to the participant;
- (4) is within 50 miles of the participant's former work location;
- (5) maintains the participant's career or tenure status; and
- (6) provides a salary rate greater than the short-term benefit.

Authority G.S. 135-102(c); 135-105(a).

20 NCAC 02O .0103 LONG-TERM DISABILITY

(a) A beneficiary or participant shall be entitled to long-term disability benefits if they meet the eligibility requirements pursuant to G.S. 135-106(a).

(b) A beneficiary or participant shall be considered to be disabled if he is unable to perform any occupation by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A beneficiary or participant shall be determined to be disabled only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any beneficiary or participant), "work which exists in the national economy" means work as defined by the Code of Federal Regulations for the Social Security Administration (20 CFR 416.966).

Authority G.S. 135-102(c); 135-106(a).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Cosmetic Art Examiners intends to adopt the rules cited as 21 NCAC 14H .0121-.0122.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: January 5, 2004

Time: 1:00 p.m.

Location: NC State Board of Cosmetic Art, 1201-110 Front St., Raleigh, NC

Reason for Proposed Action: *To make changes in the salon rules.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections should be directed to Dee Williams, 1201-110 Front St., Raleigh, NC 27609*

Written comments may be submitted to: *Dee Williams, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609 and phone (919) 733-4117 ext. 222.*

Comment period ends: February 13, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

SUBCHAPTER 14H – SANITATION

21 NCAC 14H .0121 PROHIBITED PRACTICES

Licensed cosmetologists, estheticians, and manicurists may not use or possess any of the following products:

PROPOSED RULES

- (1) Methyl Methacrylate Liquid Monomers, a.k.a. MMA; and
(2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses.

Authority G.S. 88B-4.

21 NCAC 14H .0122 TRAINING REQUIREMENT

To be deemed competent to practice microdermabrasion, licensed cosmetologists and estheticians must take a minimum of eight hours of training in microdermabrasion attained through courses taught at approved cosmetic art schools or through approved microdermabrasion continuing education courses. Proof of training must be a certificate or letter supplied by the Board or approved school. It must be posted near microdermabrasion equipment used in the salon. After December 31, 2003, licensees may not perform microdermabrasion without the necessary training as required herein. Microdermabrasion training received since January 1, 1999, may be approved to satisfy the training requirement. Such training will be considered on a case-by-case basis.

Authority G.S. 88B-4.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to adopt the rules cited as 26 NCAC 02C .0113-.0115, .0601-.0604, .0701-.0703, amend the rules cited as 26 NCAC 02C .0101-.0106, .0108, .0206-.0207, .0402-.0403, .0501-.0503 and repeal the rules cited as 26 NCAC 02C .0304-.0305, .0504.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: February 17, 2004

Time: 10:00 a.m.

Location: 422 N. Blount St., Raleigh, NC

Reason for Proposed Action: OAH is adopting, amending, and repealing rules to respond to legislative changes to the rulemaking process, to respond to budget cuts by utilizing technology, and make other changes that increase efficiency in publishing rules.

The amendment to Rule .0104 is proposed to replace the rule as approved by RRC on October 16, 2003.

Procedure by which a person can object to the agency on a proposed rule: Any person may submit written objections to the agency either prior to or at the public hearing. Written objections should be sent to Molly Masich, 6714 Mail Service Center, Raleigh, NC 27699-6714, or email to molly.masich@ncmail.net.

Written comments may be submitted to: Molly Masich, 6714 Mail Service Center, Raleigh, NC 27699-6714, phone (919) 733-2678, and email molly.masich@ncmail.net.

Comment period ends: February 17, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State 26 NCAC 02C .0104, .0114
Local
Substantive (>=\$3,000,000)
None 26 NCAC 02C .0101-.0103, .0105-.0106, .0108, .0113, .0115, .0206-.0207, .0304-.0305, .0402-.0403, .0501-.0504, .0601-.0604, .0701-.0703

CHAPTER 02 - RULES DIVISION

SUBCHAPTER 02C - SUBMISSION PROCEDURES FOR RULES AND OTHER DOCUMENTS TO BE PUBLISHED IN THE NORTH CAROLINA REGISTER AND THE NORTH CAROLINA ADMINISTRATIVE CODE

SECTION .0100 - GENERAL

26 NCAC 02C .0101 SCOPE

(a) The rules in this Section set forth the general requirements for agencies - an agency to submit rules and documents for publication in the North Carolina Register and the North Carolina Administrative Code - publication.

(b) For notices and rules submitted for publication in the Register, the an agency shall also comply with the requirements set out in Sections .0200 - .0300 .0200 and .0300 of this Subchapter.

(c) For a rule submitted for inclusion in the Code that was noticed in the Register, the an agency shall also comply with the requirements set out in Section .0400 of this Subchapter.

(d) For a rule submitted for inclusion in the Code and the rule was not noticed in the Register, the an agency shall also comply with the requirements set out in Sections .0200 and .0400 of this Subchapter.

(e) For a temporary rule submitted for review and publication in the Register and the Code, the an agency shall also comply with the requirements set out in Sections .0200 - .0400 .0200 through .0500 of this Subchapter.

(f) For a rule submitted for publication on the OAH website, an agency shall also comply with the requirements set out in Sections .0200 and .0700 of this Subchapter.

(g) For an emergency rule submitted for review and publication in the Register and Code, an agency shall also comply with the requirements set out in Sections .0200 and .0600 of this Subchapter.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0102 DEFINITIONS

The following definitions shall apply throughout this Chapter and to all forms prescribed pursuant to this Chapter unless the context indicates otherwise:

- (1) "Action" means the adoption, amendment, or repeal of a rule.
- (2) "Adoption" means a new rule with a new rule number.
- (3) "Adoption by agency" means the date that an agency takes final action on a rule.
- (4) "Amendment" means an existing rule with a deletion, addition or other change to that existing rule.
- (5) "Citation" means a reference to a rule by Title, Chapter or Subchapter, and Section or Rule number.
- (6) "Code" means the North Carolina Administrative Code.
- (7) "Commission" means the Rules Review Commission.
- (8) "Form" means an original form provided by OAH; a computer generated form from the OAH website, a CD or a diskette provided by OAH; a clear-legible photocopy of an original OAH form; or an agency generated form identical to the OAH form.
- (9) "OAH" means the Codifier of Rules at the Office of Administrative Hearings.
- (10) "Original" means a printed copy of the document, not a photocopy. document marked or stamped as such.
- ~~(11) "Recent Act" or "Recent change" as used in G.S. 150B-21.1(a)(2) and (a)(3) means an act or change that was effective no more than 180 days before the submission date of the temporary rule to OAH.~~
- (11) "Publication" includes publication on the OAH website or in the Register or entry into the Code.
- (12) "Register" means the North Carolina Register.
- (13) "Repeal" means the deletion of the entire text of a rule. When a rule is repealed, that rule number shall not be used again. The number, rule name, and final history note shall remain in the Code permanently for publication and reference purposes.

Authority G.S. 150B-21.17; 150B-21.18.

26 NCAC 02C .0103 ORIGINAL AND DUPLICATE COPY

(a) ~~The An~~ agency shall submit an original and one copy of any document and form for publication in the Register or Code.

~~(b) With the exception of Temporary Rules, the Office of Administrative Hearings shall permit the filing of documents for publication in the Code and Register by electronic transmission during regular business hours; provided the original document and one copy is received by OAH within five business days following the electronic transmission. Electronic transmissions submitted for filing with OAH shall use the electronic forms available on the Office of Administrative Hearings internet web site: <http://www.oah.state.nc.us/>. Other electronic transmissions, for example, electronic mail, shall not constitute a valid filing with the OAH under this Rule.~~

~~(e)(b) The An~~ agency shall include an additional copy of the rule and a copy of the fiscal note and attachments with any permanent rule that is submitted to the Commission.

~~(d)(c) The An~~ agency shall permanently mark or stamp the original rule and form as original. original and date it at the time of marking or stamping.

~~Note: Rules Review Commission requests that documents be submitted in the following order:~~

- (d) An agency shall submit documents in the following manner:
- (1) the original submission form;
 - ~~(2)(5)~~ the agency return copy of the submission form, form and envelope, if any;
 - (3) the copy of the submission form;
 - ~~(4)(2)~~ the original of the rule;
 - ~~(5)(4)~~ the copy, highlighted if required by Rule .0405 of this Subchapter;
 - (6) the agency return copy of the rule, if any; and
 - ~~(7) the copy of the fiscal note and attachments;~~
 - ~~(8)(7)~~ the remaining copy for RRC copy of the rule for RRC, if any.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0104 RETURN COPY

If an agency desires a returned copy of any document submitted to OAH, the agency shall submit an additional copy permanently marked as the agency's return ~~copy~~. copy and a self addressed envelope with sufficient postage affixed for U.S. mail or state government interoffice delivery.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0105 ELECTRONIC VERSION

(a) The electronic version shall be a 3 1/2 inch (1.44 Mb) high density diskette or CD compatible with or convertible to the most recent version of Word for Windows. The filed ~~diskette~~ electronic version shall identify the name of the document to be retrieved and the software used. OAH shall refuse to accept for publication any document in which the ~~diskette~~ electronic version is not compatible with or convertible to the most recent version of Word for Windows.

(b) An electronic version shall not be required if an agency that is unable to provide ~~a diskette~~ an electronic version that is compatible with or convertible to the most recent version of Word for Windows submits a written statement to the Codifier of Rules to that effect. This statement shall be signed by the agency head or rule-making coordinator.

~~(c) An electronic version shall not be required if the agency submits the document(s) by electronic transmission pursuant to 26 NCAC 2C .0103(b).~~

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0106 REFUSAL OF PUBLICATION

- (a) OAH ~~may~~shall refuse to publish any document submitted for publication ~~in the Register or Code which that~~ does not meet its requirements.
- (b) OAH shall return ~~any such the~~ document to the agency with an indication of the changes needed.
- (c) The agency may resubmit ~~such the~~ document for ~~inclusion publication in the Register,~~ but the date that OAH receives such resubmission shall govern the publication date.
- (d) If the returned rule is for inclusion in the Code, the agency shall resubmit ~~such the rule to~~ OAH within 48 hours. ~~the Commission for review.~~

Authority G.S. 150B-21.19.

26 NCAC 02C .0108 GENERAL FORMAT INSTRUCTIONS

~~The An~~ agency shall format each rule submitted to OAH for publication in the Register or Code as follows:

- (1) Paper Specifications:
 - (a) ~~an~~ 8½ by 11 inch ~~sheet of~~ plain white paper, 16 to 32 lb.;
 - (b) one side of the sheet only;
 - (c) black ink;
 - (d) ~~print font size shall be 10 point; 10 point font size;~~
 - (e) portrait print (8½ x 11), no landscape printing (11 x 8½);
 - (f) numbered lines on the left margin with each page starting with line 1;
 - (g) 1.5 line spacing;
 - (h) ~~each rule that has more than one page of text shall have page numbers appearing centered at the bottom of the page; and page for each rule that has more than one page of text; and~~
- (2) Tab and Margin Settings:
 - (a) tab settings for all rules shall be set relative from the left margin at increments of .5;
 - (b) text shall be with a one inch margin on all sides.
- (3) The Introductory Statement shall start on page 1, line 1 of each rule.
- (4) When a new chapter, subchapter, or section of rules is adopted, the Chapter, Subchapter, and Section names shall be provided in bold print with the first rule following the introductory statement. One line shall be skipped between the introductory statement and each chapter, subchapter, and section name.
- (5) One line shall be skipped before starting the line that provides the rule number and rule name. The decimal in the rule number shall be placed in position 1. One tab shall be between the rule number and rule name. The rule name

shall be in capital letters and the rule number and name shall be in bold print.

(6) Body of the Rule:

- (a) the body of the rule shall start on the line immediately following the rule name with the following markings:
 - (i) adoptions - new text shall be underlined;
 - (ii) amendments - any text to be deleted shall be struck through and new text shall be underlined;
 - (iii) repeals - text of the rule shall not be included;
- (b) there shall be no lines skipped in the body of the rule except before and in tables;
- (c) the first level of text shall be flush left and with two spaces after the closing parenthesis if the paragraph is identified by a letter;
- (d) the second level of text shall start with one tab and one hanging indent after the closing parenthesis;
- (e) the third level of text shall start with two tabs and one hanging indent after the closing parenthesis;
- (f) the fourth level of text shall start with three tabs and one hanging indent after the closing parenthesis;
- (g) the fifth level of text shall start with four tabs and one hanging indent after the closing parenthesis;
- (h) the sixth level of text shall start with five tabs and one hanging indent after the closing parenthesis.

(7) Punctuation shall be considered part of the previous word when underlining or striking through text, such as:

- (a) when the previous word is deleted, the punctuation shall also be struck through with the previous word; and
- (b) when punctuation is added after an existing word, the existing word shall be struck through and followed by the word and punctuation underlined.

The smallest unit of text to be struck through or underlined shall be an entire word or block of characters separated from other text by spaces.

(8) Charts or Tables shall be in a format that is accommodated by the most recent version of Word for Windows.

(9) ~~History Note:~~ Note Specifications:

- (a) shall be in italic font;
- (b) shall start on the second line following the body of the rule;
- (c) the first line of the History Note shall start in the first position; all lines following shall be two tabs;

- (d) the first line shall start with the words "History Note:", followed by one tab and the word "Authority". The agency shall then cite the authority(ies) in numerical order for that rule;
 - (e) the effective date of the original adoption of the rule shall be the next line following the authority. The abbreviation "Eff." shall be followed by this date;
 - (f) on the line following the "Eff." date, the amended dates shall be preceded with the words "Amended Eff." and the dates shall be listed in chronological order, with the most recent amended date listed first;
 - (g) a temporary rule shall be listed as a separate item in the history note with the following words: "Temporary (Adoption, Amendment, or Repeal) Eff. (date)";
 - (h) an emergency rule shall be listed as a separate item in the history note with the following words: "Emergency (Adoption, Amendment, or Repeal) Eff. (date)";
 - ~~(h)~~(i) the repealed date of a rule shall be the last line of the history note and start with the words "Repealed Eff." followed by the date;
 - ~~(h)~~(j) all items in the history note shall be separated by semicolons with the last line ending with a period;
 - ~~(h)~~(k) all history of a rule shall be in chronological order following the authority for the rule;
 - ~~(h)~~(l) all dates in the history note shall be complete with the month spelled out, and shall not contain any abbreviations.
- (10) Numbers within the text shall be as follows:
 - (a) numbers from one to nine shall be spelled out;
 - (b) figures shall be used for numbers over nine;
 - (c) if a phrase contains two numbers, only one of which is over nine, figures shall represent both.
 - (11) Monetary figures within the text shall be spelled out followed by the numerical figure in parenthesis. Decimal and zeros shall be used only for even dollar amounts of sums less than one thousand dollars (\$1,000).

SIGNATURE

(a) If the head of a principal state department has delegated the authority to sign forms to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation with rule filings. That delegation authorization does not apply to all agency, boards or commission heads. The following is a listing of principal state department heads that may delegate the function of signing forms for the agency head:

- (1) Department of Cultural Resources
- (2) Department of Health and Human Services
- (3) Department of Revenue
- (4) Department of Crime Control and Public Safety
- (5) Department of Correction
- (6) Department of Environment and Natural Resources
- (7) Department of Transportation
- (8) Department of Administration
- (9) Department of Commerce
- (10) Department of Juvenile Justice and Delinquency Prevention.

(b) It is necessary to submit only one copy of the delegation with all rules filed by an agency for a single month's review by the Commission.

Authority G.S. 150B-21.19.

26 NCAC 02C .0114 AGENCY FINAL COPY

- (a) OAH shall send electronically a final draft of an adopted emergency, temporary or permanent rule to an agency's rule-making coordinator after the rule is filed with OAH.
- (b) The agency shall notify OAH of any error made in the draft within 10 business days of notification by OAH.
- (c) If OAH receives written notification from the agency of any error made by OAH, OAH shall correct the error.
- (d) If OAH receives written notification from the agency of any error in the content of the rule not made by OAH, OAH shall return the rule to the Commission.

Authority G.S. 150B-21.5; 150B-21.20.

26 NCAC 02C .0115 NOTIFICATION OF CONSULTATION

An agency who is required by G.S. 12-3.1 to consult with the Joint Legislative Commission on Governmental Operations shall notify OAH of the date of the consultation by notation on the Emergency Rulemaking Findings of Need form, the Temporary Rulemaking Findings of Need form, or the Submission for Permanent Rule form if the consultation occurred before the form was filed with the Commission or OAH. If consultation occurred after the forms were filed with the Commission or OAH, the agency shall notify OAH in writing citing the rule and the date of consultation.

Authority G.S. 150B-21.3(c1); 150B-21.18.

26 NCAC 02C .0206 RULE SUBDIVISION

(a) For rules adopted by an agency prior to July 1, 2004, an agency shall subdivide a rule containing more than one idea into paragraphs labeled: (a), (b), (c), Any subdivided paragraphs shall be labeled: (1), (2), (3), ...; (A), (B), (C), ...; (i), (ii), (iii), ...;

Note: Examples of proper formatting can be found on the OAH website located at www.oah.state.nc.us www.ncoah.com/rules.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0113 AUTHORIZATION FOR

(I), (II), (III), All subdivisions of rules shall be represented by this order, and each label shall be in parentheses.

~~(b) For rules adopted by an agency on or after July 1, 2004, an agency shall subdivide a rule containing more than one idea into paragraphs labeled: (a), (b), (c), Any subdivided paragraphs shall be labeled: (1), (2), (3), ...; (A), (B), (C), ...; (i), (ii), (iii), ...; (I), (II), (III), ...; (A), (B), (C),~~ All subdivisions of rules shall be represented by this order, and each label shall be in parentheses.

Authority G.S. 150B-21.18; 150B-21.19.

26 NCAC 02C .0207 LISTING WITHIN RULES

~~(a) For a rule adopted by an agency prior to July 1, 2004, when the rule is not subdivided into paragraphs but contains a list, the sequence of labels for the lists shall be: (1), (2), (3), ...; (a), (b), (c), ...; (i), (ii), (iii), ...; (A), (B), (C), ...; (I), (II), (III),~~

~~(b) For a rule adopted by an agency on or after July 1, 2004, when the rule is not subdivided into paragraphs but contains a list, the sequence of labels for the lists shall be: (1), (2), (3), ...; (a), (b), (c), ...; (i), (ii), (iii), ...; (A), (B), (C), ...; (I), (II), (III), ...; (i), (ii), (iii),~~

~~(c) A rule shall not begin with a list. A list contained within a rule shall be preceded by some form of introductory material.~~

~~(d) If there is a list within a paragraph, the rule shall follow the sequence in Rule .0206 of this Section.~~

Authority G.S. 150B-21.18; 150B-21.19.

26 NCAC 02C .0304 NOTICE OF PERMANENT RULE-MAKING PROCEEDINGS

~~(a) The agency shall make its Notice of Rule-Making Proceedings on an OAH Notice of Rule-Making Proceedings form.~~

~~(b) If the information contained in the notice exceeds the space provided on the form, the agency shall also submit an electronic version of the information.~~

Authority G.S. 150B-21.17.

26 NCAC 02C .0305 PUBLICATION OF RULE-MAKING AGENDA

~~If an agency publishes a rule-making agenda, the agency shall submit the agenda, the submission form, and an electronic version of the agenda.~~

Authority G.S. 150B-21.17.

SECTION .0400 – NORTH CAROLINA ADMINISTRATIVE CODE

26 NCAC 02C .0402 PUBLICATION OF A PERMANENT RULE

The An agency shall submit a permanent rule for publication in the Code with the following:

- (1) An original submission form and copy (Rule .0403 of this Section).
- (2) If applicable, a letter delegating authority for the signature on the submission form (Rule .0113 of this Subchapter).

~~(3)~~ An original and copies of the permanent rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter containing:

- (a) an introductory statement (Rule .0404 of this Section);
- (b) the body of the rule (Rule .0405 of this Section);
- (c) any changes in the rule (Rule .0405 of this Section);
- (d) the history note (Rule .0406 of this Section).

~~(4)~~ A return copy, if desired (Rule .0104 of this Subchapter).

~~(5)~~ An electronic version of the rule prepared in accordance with Rule .0105 of this Subchapter if the rule differs from the proposed text published in the Register or if the rule was not published in the Register.

Authority G.S. 150B-21.19.

26 NCAC 02C .0403 SUBMISSION FOR PERMANENT RULE FORM

(a) The An agency shall submit a completed typed Submission for Permanent Rule form for each rule submitted for publication in the Code, except that the agency shall submit a single Submission for Permanent Rule form for all repealed rules that are codified within the same chapter.

(b) The agency head or rule-making coordinator shall sign the Submission for Permanent Rule form. ~~If the agency head has designated its authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such designation. It is only necessary to submit one copy of such designation with all rules filed by an agency for a single month's review by the Commission.~~

Authority G.S. 150B-21.19.

SECTION .0500 - TEMPORARY RULES

26 NCAC 02C .0501 SCOPE

~~The rules in this Section govern the requirements for An agency submitting temporary rules to be reviewed by the Codifier, for publication published in the Register, and for inclusion in Register and Code the Code. The agency shall also comply with the requirements in Sections .0100—0400 .0100 through .0500 of this Subchapter.~~

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0502 PUBLICATION OF A TEMPORARY RULE

The agency shall submit a each temporary rule for review by OAH and publication in the Code with the following:

- (1) An original ~~Temporary Rule Certification~~ Temporary Rulemaking Findings of Need form and ~~copy-copies~~ (Rule .0503 of this Section).

- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3)(2) An original and copies of the temporary rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).
- (4)(3) A return copy, An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
- (4) An original Notice of Text or Notice of Text and Hearing form with copy if publication in the Register shall serve as Notice of Text.
- (5) An electronic version of the rule (Rule .0105 of this Subchapter).

Authority G.S. 150B-21.19.

26 NCAC 02C .0503 TEMPORARY RULEMAKING FINDINGS OF NEED FORM

- (a) The An agency shall submit a completed typed original Temporary Rulemaking Findings of Need Temporary Rule Certification form and two copies for a rule to be submitted for publication in the Code. The agency shall submit a single Temporary Rule Certification form for temporary rules when:
 - (1) the rules are codified within the same chapter in the Code;
 - (2) the finding for the action is the same;
 - (3) the proposed effective date is the same; and
 - (4) the rules are submitted at the same time for review by the Codifier of Rules.
- (b) The agency head shall sign the original Temporary Rule Certification form. If the agency head has designated delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such designation, delegation.

Authority G.S. 150B-21.19.

26 NCAC 02C .0504 APPEARANCE BY AGENCY

The Codifier may request that a representative of the agency appear before him during the review to clarify the agency's finding of need or to consider additional information submitted by the agency or any interested person.

Authority G.S. 150B-21.1.

SECTION .0600 - EMERGENCY RULES

26 NCAC 02C .0601 SCOPE

An agency submitting emergency rules to be reviewed by the Codifier, and for publication in the Register and Code, shall comply with the requirements in Sections .0100 through .0400 of this Subchapter and this Section.

Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19.

26 NCAC 02C .0602 PUBLICATION OF AN EMERGENCY RULE

An agency shall submit an emergency rule for review by OAH and publication in the Register and the Code with the following:

- (1) An original Emergency Rule Findings of Need form and copy (Rule .0603 of this Section).
- (2) If applicable, a letter delegating the authority for the signature on the form (Rule .0113 of this Subchapter).
- (3) An original and copies of the emergency rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
 - (a) an introductory statement (Rule .0404 of this Subchapter);
 - (b) the body of the rule (Rule .0405 of this Subchapter);
 - (c) the history note (Rule .0406 of this Subchapter).
- (4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
- (5) An electronic version of the rule (Rule .0105 of this Subchapter).
- (6) A copy of any document supporting the reason for the emergency rule pursuant to G.S. 150B-21.1A(a). The agency shall highlight the information in the document that is pertinent to the need for the emergency rule.

Authority G.S. 150B-21.19.

26 NCAC 02C .0603 EMERGENCY RULE FINDINGS OF NEED FORM

An agency shall submit a completed typed Emergency Rule Findings of Need form for a rule to be submitted for publication in the Code. The agency shall submit a single Emergency Rule Findings of Need form for emergency rules when:

- (1) the rules are codified within the same chapter in the Code;
- (2) the finding for the action is the same;
- (3) the proposed effective date is the same; and
- (4) the rules are submitted at the same time for review by the Codifier of Rules.

(b) The agency head shall sign the Emergency Rule Findings of Need form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such delegation.

Authority G.S. 150B-21.19.

26 NCAC 02C .0604 APPEARANCE BY AGENCY

The Codifier may request that a representative of an agency appear before him during the review to clarify the agency's findings of need, to provide additional information, or to answer questions of any interested person.

Authority G.S. 150B-21.1A.

SECTION .0700 – PUBLICATION ON THE OAH WEBSITE

26 NCAC 02C .0701 SCOPE

An agency submitting rules that are required by state or federal law to be published on the OAH website shall comply with the requirements in Sections .0100 through .0400 and this Section.

Authority G.S. 150B-21.1.

26 NCAC 02C .0702 PUBLICATION OF A RULE ON THE OAH WEBSITE

An agency shall submit a rule to be published on the OAH website with the following:

- (1) An original Publication on the OAH Website form and copy (Rule .0703 of this Section).
(2) If applicable, a letter delegating authority for the signature on the form (Rule .0113 of this Subchapter).
(3) An original and copies of the rule (Rule .0103 of this Subchapter) prepared in accordance with Rule .0108 of this Subchapter, containing:
(a) an introductory statement (Rule .0404 of this Subchapter);
(b) the body of the rule (Rule .0405 of this Subchapter);
(c) the history note (Rule .0406 of this Subchapter).
(4) An agency return copy and envelope, if desired (Rule .0104 of this Subchapter).
(5) An electronic version of the rule (Rule .0105 of this Subchapter).

Authority G.S. 150B-21.19.

26 NCAC 02C .0703 PUBLICATION FORM

- (a) An agency shall submit a completed typed Publication on the OAH Website form for a rule to be submitted for publication in the OAH website.
(b) The agency shall submit a single form for each permanent rule submitted for publication.
(c) The agency shall submit a single form for proposed temporary rules when:
(1) the rules are codified in the same chapter in the Code;
(2) the rules are scheduled for the same public hearing(s); and
(3) the comment period is the same.
(d) The agency head or rulemaking coordinator shall sign the Publication form. If the agency head has delegated this authority to another pursuant to G.S. 143B-10(a), then the agency shall submit a copy of such delegation.

Authority G.S. 150B-21.19.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings, Hearing Division intends to amend the rules cited as 26 NCAC 03 .0101, .0107.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: February 17, 2004

Time: 10:00 a.m.

Location: Lee House, 422 N. Blount St., Raleigh, NC

Reason for Proposed Action: To permit acceptance of pleadings in contested cases by email attachment under the same procedure for acceptance of pleadings by facsimile transmission; to expand the time limit to receive original document from 5 to 7 days; and to delete provisions for electronic filings on OAH electronic forms. To remove special education contested cases from the provision of the ALJ settlement conference so that the exclusive alternative dispute resolution procedure for these contested cases will be the mediation procedures as provided in G.S. 150B-23.1 and G.S. 115C-116(b).

Procedure by which a person can object to the agency on a proposed rule: Any person may submit written objections to the agency either prior to or at the public hearing. Written objections should be sent to Julian Mann, 6714 Mail Service Center, Raleigh, NC 27699-6714, or email to julian.mann@ncmail.net.

Written comments may be submitted to: Julian Mann, Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, (919) 733-2719, fax (919) 733-3462, and email julian.mann@ncmail.net.

Comment period ends: February 17, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 03 - HEARINGS DIVISION

SECTION .0100 - HEARING PROCEDURES

26 NCAC 03 .0101 GENERAL

PROPOSED RULES

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.
- (2) The Office of Administrative Hearings ~~shall may supply, at the cost of reproduction, supply forms for use in contested cases.~~ These forms shall conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.
- (3) The Office of Administrative Hearings shall permit the filing of contested case documents and other pleadings by facsimile (fax) or electronic ~~transmission during regular business hours mail by an attached file either in PDF format or a document that is compatible with or convertible to the most recent version of Word for Windows.~~ Electronic mail with attachment shall be sent by electronic transmission to: oah.clerks@ncmail.net. The faxed or electronic documents shall be deemed a "filing" within the meaning of 26 NCAC 03 .0102(a)(2) provided the original signed document and one copy is received by OAH within ~~five seven~~ business days following the faxed or electronic transmission. ~~Electronic transmissions submitted for filing under Item (3) of this Rule with OAH shall use the electronic forms available on the Office of Administrative Hearings internet web site: http://www.oah.state.nc.us/. Other electronic transmissions, for example, electronic mail, mail without attached file as specified in Item (3) of this Rule, shall not constitute a valid filing with the Office of Administrative Hearings. OAH under this Rule.~~
- (4) ~~Electronic transmissions filed by licensed North Carolina attorneys shall be in accordance with the Electronic Commerce Act, G.S. 66, Article 11A. Attorneys shall register for an account on the Office of Administrative Hearings internet web site: http://www.oah.state.nc.us/. Electronic filings submitted under Item (4) of this Rule shall be deemed an original "filing" within the meaning of 26 NCAC 03 .0102(a)(2). Electronic transmissions submitted for filing under Item (4) of this Rule with the OAH shall use the electronic forms available on the Office of Administrative Hearings internet web site. Other electronic transmissions, for example, electronic mail, shall not constitute a valid filing with the OAH under this Rule.~~

~~(5)~~(4) Every pleading and other documents filed with OAH shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

~~(6)~~(5) Except as otherwise provided by statutes or by rules adopted under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

Authority G.S. 7A-750; 7A-751(a); 150B-40(c).

26 NCAC 03 .0107 SETTLEMENT CONFERENCE

(a) A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

(b) A settlement conference shall be held at the request of any party, the administrative law judge, or the Chief Administrative Law Judge. Upon receipt of the request, the Chief Administrative Law Judge shall assign the case to another administrative law judge for the purpose of conducting a settlement conference. Unless both parties and the administrative law judge agree, a unilateral request for a settlement conference shall not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the administrative law judge. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference. The settlement procedures set out in this Paragraph shall not apply to Special Education contested cases.

(c) All parties shall attend or be represented at a settlement conference under the same requirements as provided for in a mediation settlement conference under Rule .0204(a) of this Chapter. Parties or their representatives shall be prepared to participate in settlement discussions.

(d) The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

(e) At the settlement conference, the parties shall be prepared to provide information and to discuss all matters required in Rule .0104 of this Section.

(f) If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the administrative law judge presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the administrative law judge who is assigned to hear the case.

Authority G.S. 7A-751(a); 150B-22; 150B-31(b).

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
 This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Rule-making Agency: North Carolina Board of Agriculture

Rule Citation: 02 NCAC 48A .1208; 48C .0108

Effective Date: November 24, 2003

Date Approved by the Rules Review Commission: November 20, 2003

Reason for Action:

02 NCAC 48A .1208 – The Board of Agriculture may adopt temporary rules to increase the fee to be collected under G.S. 106-420 for nursery dealer certification
 02 NCAC 48C .0108 – Unless the germination standards for barley and rye seed are temporarily lowered, there will not be adequate supplies of seed for North Carolina farmers, resulting in unnecessary loss of income.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1200 - NURSERY CERTIFICATION

02 NCAC 48A .1208 NURSERY DEALER CERTIFICATE

(a) Persons who maintain no regular nursery but who deal in nursery stock grown in regularly certified or registered nurseries and/or collected plants shall be required to possess a nursery dealer certificate. To obtain such a certificate, the nursery dealer must submit an application listing all sources of nursery stock and collected plants to be distributed or sold. It shall be a violation of this Section for a nursery dealer to distribute or sell nursery stock or collected plants which have not been inspected and certified by an inspector in North Carolina or a duly authorized plant pest regulatory official of another state or country.

(b) The annual fee for a nursery dealer certificate shall be ~~ten~~ fifty dollars (\$10.00) (\$50.00) for each location from which nursery stock is sold, bartered, exchanged or given away. This certificate expires December 31 of each year.

(c) All nursery stock and/or collected plants in the custody of any dealer shall be subject to inspection at any time and shall be maintained in certifiable condition. Dealer certificates can be revoked at any time for cause. Records shall be kept of all plant acquisitions and shall be made available to any inspector of the North Carolina Department of Agriculture and Consumer Services upon request.

History Note: Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420;
 Eff. January 1, 1985;
 Amended Eff. June 1, 1990;
Temporary Amendment Eff. November 24, 2003.

SUBCHAPTER 48C – SEEDS

02 NCAC 48C .0108 LESS THAN 70 PERCENT HARD SEED AND GERMINATION

The sale of any agricultural seed having a total percentage of germination and hard seed of less than 70 percent is prohibited, with the following exceptions:

- (1) field corn shall germinate not less than 90 percent; ~~and~~
- (2) cotton seed and Kentucky Bluegrass shall germinate not less than 60 ~~percent~~ percent; ~~and~~
- (3) barley and rye seed shall germinate not less than 60 percent.

History Note: Authority G.S. 106-277.9; 106-277.15;
 Eff. February 1, 1976;
 Amended Eff. February 1, 1983; March 12, 1981; March 24, 1979;
 Transferred from T02.11C Eff. January 1, 1985;
 Temporary Amendment Eff. March 21, 1986 for a period of 120 days to expire on July 19, 1986;
 Amended Eff. October 1, 1989;
 Temporary Amendment Eff. April 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Temporary Amendment Expired 1994;
Temporary Amendment Eff. November 24, 2003 to Expire December 31, 2003.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, December 18, 2003, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Friday, December 12, 2003 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dana Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

December 18, 2003 January 18, 2004

RULES REVIEW COMMISSION

November 20, 2003

MINUTES

The Rules Review Commission met on Thursday morning, November 20, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, Jim Funderburk, Jeffrey Gray, Jennie Hayman, Robert Saunders, Dana Simpson and John Tart. Commissioner Hilliard arrived before the meeting ended.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson, Administrative Assistant.

Chairman Hayman welcomed new commission member Dana Simpson to the Rules Review Commission. Chairman Hayman also explained that Mr. Simpson replaces Walter Futch who served two terms and was a valued member of the Rules Review Commission. Commissioner Tart suggested that a letter be sent to Walter Futch thanking him for his service and enclosing a copy of the minutes with this appreciation.

The following people attended:

Jess Nawkins	Marine Fisheries Commission
Belinda Loftin	Marine Fisheries Commission
Lisa Martin	NC Home Builders Association
Terry Wright	Department of Justice
Lennie Collins	Department of Revenue
Virginia Taylor	Department of Revenue
Frank Crawley	Department of Justice
Brooks Skinner	Department of Administration
Jeff Parsons	Attorney General's Office
John Hoomani	Department of Labor
Lynette Johnson	Department of Labor
Elizabeth Kountis	DENR/DWQ
Jeff Manning	DENR/DWQ
Dedra Alston	DENR
Grady McCallie	NC Conservation Network
Margaret Westbrook	Kennedy Covington
Alan Clark	DENR/DWQ
Emily Lee	Department of Transportation
Nick Fountain	Young, Moore & Henderson

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Commissioner Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the October 16, 2003, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

1 NCAC 30H .0102; .0201; .0202; .0404: Department of Administration – The Commission approved the rewritten rules submitted by the agency.

1 NCAC 30H .0203; .0204; .0205; .0303; .0304; .0305; .0601; .0701; .0801; .0901; .1001: Department of Administration – The rules were withdrawn by the agency.

10A NCAC 14C .2702: DHHS – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 70I .0101: Social Services Commission – No action was taken.

15A NCAC 2B .0243; .0244: Environmental Management Commission – No action was taken. The rules were not received by the Rules Review Commission’s deadline for receipt of rewritten rules. The Commissioners have not had sufficient time to review the rewritten rules.

15A NCAC 2I .0602; .0603: Environmental Management Commission – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 3H; 3I; 3J; 3K; 3L; 3N; 3O; 3Q 3R: Marine Fisheries Commission – The Commission approved these rules.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved unanimously with the following exceptions:

10A NCAC 21A .0201; .0602; .0603; .0605; .0606; .0607; .0608: DHHS/Division of Medical Assistance – The rules were withdrawn by the agency.

10A NACA 21B .0201; .0202; .0203; .0204; .0206; .0207; .0209: DHHS/Division of Medical Assistance – The rules were withdrawn by the agency.

Commissioner Gray did not vote or participate in discussions on the Private Protective Services Board rules.

13 NACA 12 .0408: Department of Labor – The Commission objected to the rule due to lack of statutory authority and ambiguity. There is no authority for the Department of Labor to define “premises” differently than the ABC Commission for purposes of an ABC On-Premises Permit. An On-Premise Permit does not apply just to a building but may also apply to adjacent property. In addition, defining “premises” as merely the building makes no sense since the statute would then prohibit a person from working in a building unless he works outside the building.

13 NCAC 15 .0704: Department of Labor - The Commission objected to the rule due to lack of statutory authority. There is no authority for paragraph (b), at least to the extent it allows the department, in some instances, to charge more than the maximum \$250 per device for the inspection of an amusement device.

19A NACA 2C .0108: Department of Transportation – The Commission objected to the rule due to ambiguity. In (c) it is unclear what is meant or required by the Department “may defray the costs of moving any existing fences or buildings within the rights of way.” It is unclear whether this means the Department may accept money or in-kind contributions from other governmental agencies or individuals, or may assess someone costs for this. If the latter it is unclear how this would be done. It is unclear how this particular activity and its associated costs differs from all the other activities and costs associated with “paving or general improvement” of “existing secondary roads which are part of the state highway system.”

21 NCAC 50 .0404: State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors – The Commission objected to the rule due to ambiguity. In (a) it is required that “at least one individual who holds qualification in the classification needed for the work being performed,” lines 6 and 7 emphasis added, be on-site at each business location. It is unclear what are the exact circumstances in (a) requiring that individual to be present since (b) stipulates that “a temporary field office used solely to conduct work shall not be deemed a separate place of business” and therefore, presumably, exempt from the requirement of this rule. It is unclear 1) what constitutes a “temporary” office, if that is the distinguishing factor of this rule; or 2) whether it is something in the nature of the work at the office; or 3) whether this is a waiver of the rule in (a) or a separate and distinct rule.

25 NCAC 1K .0311; .0314: State Personnel Commission – The Commission objected to these rules due to ambiguity. Rule .0311 appears to permit an agency to allow an employee “time off the job if the course is available only during working hours.” Rule .0314, as written, appears to suggest that courses shall only be “taken on the employee’s own time.” The two rules when read together further suggest the possibility that if the course is not taken outside the employee’s regular work hours, and if the employee is allowed to take time off, then the employee should not continue to be paid for the time the employee is taking the course during regular work hours. While the intent, and part of the language, of both of these rules seems to clarify that an agency may continue to pay an employee while that employee is attending approved classes, and that this may occur during the work hours, the overall language of the two rules is not clear.

25 NCAC 1K .0317: State Personnel Commission – The Commission objected to the rule due to ambiguity. In line 7 there is a double negative: “but not fees unrelated to...” (emphasis added). Double negatives are almost always ambiguous. But there is an even more serious problem here. It may not always be clear what fees are “only tuition and other academic related fees” and therefore reimbursable. The rule is also unclear how to deal with fees, otherwise not reimbursable, where the payment of those fees may be, and usually is, required as a condition of registration and attendance at the institution.

TEMPORARY RULES

Chairman Hayman presided over the review of two temporary rules submitted by the Board of Agriculture and the rules were approved unanimously. The approved rules are cited as:

- 02 NCAC 48A .1208
02 NCAC 48C .0108

The meeting adjourned to take a five minute break at 10:50 a.m.

The meeting reconvened at 10:55 a.m.

COMMISSION PROCEDURES AND OTHER BUSINESS

Joe DeLuca provided a proposal of rules to give the Rules Review Commission staff the authority to send back rules that are not properly formatted before review. He also proposed changing the deadline date for technical changes requested by the Rules Review Commission staff as well as rules rewritten to satisfy Commission objections to be returned to the office five business days before the meeting date rather than the current two business days. The Commissioners were especially concerned how giving the staff more discretion concerning rejecting rule filings would affect the deadline for filing permanent rules to replace temporary rules. The Commission asked for Mr. DeLuca to work on the language of the rules further and they would review them at the next meeting.

The Commission also set another meeting for December 11, 2003, to review temporary rules that were filed by the Board of Agriculture and any other temporary rules that may come in before then. Commissioner Hayman, Jeffrey Gray and Dana Simpson said they would be available for this meeting to be held in the Commission. Other Commission members may join by conference call if they desire. The time of this meeting will be set later and announced by staff.

The meeting adjourned at 11:20 a.m.

The next meeting of the Commission is Thursday, December 18, 2003 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules
Log of Filings (Log #204)
October 21, 2003 through November 20, 2003

DEPARTMENT OF ADMINISTRATION

Table with 3 columns: Description, Rule Number, and Action. Includes items like 'Review by State Construction Office for Fire Safe Authority' and '01 NCAC 30A .0406 Adopt'.

MEDICAL CARE COMMISSION

Table with 3 columns: Description, Rule Number, and Action. Includes items like 'Orders' and '10A NCAC 13J .1302 Amend'.

RULES REVIEW COMMISSION

Specialty Care Transport Program Continuing	10A NCAC 13P .0121	Amend
System Continuing Education Coordinator	10A NCAC 13P .0122	Adopt
EMS System Requirements	10A NCAC 13P .0201	Adopt
EMS Systems	10A NCAC 13P .0202	Adopt
Special Situations	10A NCAC 13P .0203	Amend
EMS Provider License Requirements	10A NCAC 13P .0204	Amend
EMS Provider License Conditions	10A NCAC 13P .0205	Amend
Ground Ambulance Vehicle and Equipment Requirement	10A NCAC 13P .0207	Amend
Convalescent Ambulance Vehicle and Equipment Requirement	10A NCAC 13P .0208	Amend
Convalescent Ambulance Vehicle and Equipment Requirement	10A NCAC 13P .0208	Amend
Air Medical Ambulance Vehicle and Equipment	10A NCAC 13P .0209	Amend
Water Ambulance Watercraft and Equipment	10A NCAC 13P .0210	Amend
Ambulance Permit Conditions	10A NCAC 13P .0211	Amend
EMS Non-transporting Vehicle Permit Conditions	10A NCAC 13P .0214	Amend
Program Criteria	10A NCAC 13P .0301	Adopt
Ground Specialty Care Transport Programs	10A NCAC 13P .0303	Amend
Ground Specialty Care Transport Programs	10A NCAC 13P .0303	Amend
Components of Medical Oversight for EMS Systems	10A NCAC 13P .0401	Amend
Responsibilities of the Medical Director for EMS	10A NCAC 13P .0403	Amend
Requirements for Treatment Protocols for EMS System	10A NCAC 13P .0405	Amend
Requirements for Treatment Protocols for Specialty	10A NCAC 13P .0406	Amend
Requirements for Emergency Medical Dispatch Priori	10A NCAC 13P .0407	Amend
Peer Review Committee for EMS Systems	10A NCAC 13P .0408	Amend
Peer Review Committee for Specialty Care Transport	10A NCAC 13P .0409	Amend
Educational Programs	10A NCAC 13P .0501	Adopt
Credentialing Requirements for MR, EMT, EMT-I EMT-P	10A NCAC 13P .0502	Adopt
Renewal of Credentials for MR EMT EMT-I EMT-P &	10A NCAC 13P .0504	Adopt
Practice settings for EMS Personnel	10A NCAC 13P .0506	Amend
Credentialing Requirements for Level I EMS Instruction	10A NCAC 13P .0507	Adopt
Credentia ling Requirements for Level II EMS Instruction	10A NCAC 13P .0508	Adopt
Credentialing of Individuals to Administer Life support	10A NCAC 13P .0509	Amend
Renewal of Credentials for Level I and Level II	10A NCAC 13P .0510	Adopt
Continuing Education EMS Educational Institution	10A NCAC 13P .0601	Adopt
Basic EMS Educational Institution Requirements	10A NCAC 13P .0602	Adopt
Advanced EMS Educational Institution Requirements	10A NCAC 13P .0603	Adopt
Transition for Approved Teaching Institutions	10A NCAC 13P .0604	Repeal
Denial Suspension Amendment or Revocation	10A NCAC 13P .0701	Adopt
Level I Trauma Center Criteria	10A NCAC 13P .0901	Amend
Level II Trauma Center Criteria	10A NCAC 13P .0902	Amend
Level III Trauma Center Criteria	10A NCAC 13P .0903	Amend
Renewal Designation Process	10A NCAC 13P .0905	Amend
Regional Trauma System Policy Development	10A NCAC 13P .1103	Amend
State Trauma System Plan	10A NCAC 13P .1201	Repeal
Regional Trauma System Plan	10A NCAC 13P .1202	Repeal
Regional Trauma System Policy Development	10A NCAC 13P .1203	Repeal
Source of Forms and Document	10A NCAC 13P .1301	Repeal

DENR/COMMISSION FOR HEALTH SERVICES

Waters Monitoring Evaluation and Notification	15A NCAC 18A .3401	Adopt
Bacterial Limits for Swimming	15A NCAC 18A .3402	Adopt
Frequency of Sampling	15A NCAC 18A .3403	Adopt
Public Notice of Increased Health Risks in Swimming	15A NCAC 18A .3404	Adopt
Swimming Advisories for Point Source	15A NCAC 18A .3405	Adopt
Rescinding a Swimming Advisory or Swimming Alert	15A NCAC 18A .3406	Adopt
Destruction of Signs	15A NCAC 18A .3407	Adopt
Applicability of Rules	15A NCAC 18A .3408	Adopt

TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS

Specific Information Signing Program	19A NCAC 02E .0216	Amend
Specific Information Program Definitions	19A NCAC 02E .0217	Repeal
Location of Panels	19A NCAC 02E .0218	Repeal

RULES REVIEW COMMISSION

Eligibility for Program	19A NCAC 02E .0219	Amend
Composition of Signs	19A NCAC 02E .0220	Amend
Fees	19A NCAC 02E .0221	Amend
Contracts with the Department	19A NCAC 02E .0222	Repeal
DEPARTMENT OF STATE TREASURER		
Fees	20 NCAC 03 .0112	Amend
NC STATE BOARD OF CHIROPRACTIC EXAMINERS		
Application for Licensure	21 NCAC 10 .0202	Amend
Certification of Radiologic Technologists	21 NCAC 10 .0206	Amend
Continuing Education Seminars	21 NCAC 10 .0207	Adopt
Continuing Education Seminars	21 NCAC 10 .0207	Adopt
Acceptable Care	21 NCAC 10 .0208	Adopt
BOARD OF DENTAL EXAMINERS		
Definitions	21 NCAC 16A .0101	Amend
Other Requirements	21 NCAC 16B .0304	Amend
Dental Licensure by Credentials	21 NCAC 16B .0401	Adopt
Limited Volunteer Dental License	21 NCAC 16B .0501	Adopt
Instructor's License	21 NCAC 16B .0601	Adopt
Other Requirements	21 NCAC 16C .0304	Amend
Dental Hygiene Licensure by Credentials	21 NCAC 16C .0401	Adopt
Application	21 NCAC 16D .0104	Amend
Application	21 NCAC 16E .0103	Amend
Dentists	21 NCAC 16M .0101	Amend
Dental Hygienists	21 NCAC 16M .0102	Amend
Application	21 NCAC 16Y .0102	Amend
NC BOARD OF NURSING		
Selection and Qualifications of Nurse Members	21 NCAC 36 .0109	Amend
Determination of Vacancy	21 NCAC 36 .0112	Amend
Determination of Qualifications	21 NCAC 36 .0113	Amend
Inactive and Retired Status	21 NCAC 36 .0202	Amend
Existing Nursing Programs	21 NCAC 36 .0303	Amend
Records and Reports	21 NCAC 36 .0323	Amend
STATE BOARD OF EXAMINERS OF PLUMBING, HEATING, & FIRE SPRINKLER CONTRACTORS		
Organization Officers Duties	21 NCAC 50 .0103	Repeal
Qualifications Determined by Examination	21 NCAC 50 .0301	Amend
Applications Issuance of License	21 NCAC 50 .0306	Amend
Multiple Licenses	21 NCAC 50 .0405	Amend
Responsibility of Licenses Person Employed by Firm	21 NCAC 50 .0406	Amend
Proposal Bid or Estimate	21 NCAC 50 .0413	Adopt
General Supervision and Standards of Competence	21 NCAC 50 .0505	Amend
Limited Fire Sprinkler Inspection Technician License	21 NCAC 50 .0513	Amend
Limited Fire Sprinkler Inspection Contractor License	21 NCAC 50 .0514	Amend
Limited Fire Sprinkler Maintenance	21 NCAC 50 .0515	Adopt
Informal Procedures	21 NCAC 50 .1006	Amend
Continuing Education Requirements	21 NCAC 50 .1401	Amend
NC EXAMINERS FOR SPEECH AND LANGUAGE PATHOLOGISTS & AUDIOLOGISTS		
Supervision of Hearing Screening	21 NCAC 64 .0212	Adopt
Supervision of Speech Screening	21 NCAC 64 .0213	Adopt
STATE PERSONNEL COMMISSION		
Positions under Competitive Service	25 NCAC 01C .0602	Repeal
Agency Responsibility	25 NCAC 01C .0702	Amend
Approved Holidays	25 NCAC 01E .0901	Amend
Alternative Holiday Schedules	25 NCAC 01E .0905	Amend
Leave Adverse Weather Conditions	25 NCAC 01E .1005	Amend
Donor Guidelines	25 NCAC 01E .1305	Amend

RULES REVIEW COMMISSION

Smallpox Vaccination	25 NCAC 01E .1701	Adopt
Other Contagious Diseases	25 NCAC 01E .1702	Adopt
Agency	25 NCAC 01J .0701	Repeal

**AGENDA
RULES REVIEW COMMISSION
December 18, 2003**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Administration – 01 NCAC 30H .0304; .0601; .0901 (DeLuca)
 - B. Board of Elections – 08 NCAC 1-12 (DeLuca)
 - C. Social Services Commission – 10A NCAC 70I .0101 (Bryan)
 - D. Department of Labor - 13 NCAC 12 .0408 (Bryan)
 - E. Department of Labor – 13 NCAC 15 .0704 (Bryan)
 - F. Environmental Management Commission – 15A NCAC 02B .0243; .0244 (DeLuca)
 - G. Environmental Management Commission – 15A NCAC 02H .0126; .1014 (DeLuca)
 - H. Department of Transportation – 19A NCAC 02C .0108 (DeLuca)
 - I. State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors – 21 NCAC 50 .0404 (DeLuca)
 - J. State Board of Personnel – 25 NCAC 01K .0311; .0314; .0317 (DeLuca)
- IV. Review of Rules (Log Report #204)
- V. 2004 State Medical Facilities Plan
- VI. Commission Business
- VII. Next meeting: January 15, 2003

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
<u>AGRICULTURE</u>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Regis A Urik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development June Locklear	02 DHR 1672	Wade	06/10/03	
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	
Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03	
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care Personnel Registry Section	02 DHR 2206	Wade	11/04/03	

CONTESTED CASE DECISIONS

Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
Lawyers Glen Retirement Living Ctr, Charlotte Elliotte v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
Sarah P Jordan v. DHHS, Div. of Facility Services	03 DHR 0155	Gray	06/18/03	
Martha Banks (ID #72000027) v. Div. of Child Dev., Child Abuse/Neglect Dept., Perquimans Co. DSS	03 DHR 0168	Wade	06/12/03	
Southeastern Reg Med Ctr & Lumberton Radiological Assoc P.A. v DHHS, Div. of Facility Services	03 DHR 0226	Wade	10/31/03	18:12 NCR 1011
Aaron Atwater v. DHHS, Div. of Medical Assistance	03 DHR 0262	Chess	08/18/03	
Grace Browning, Gorge D Browning Jr v John Umstead Hospital	03 DHR 0285	Mann	10/03/03	
Nakeisha Shawon Leak v. DHHS, Office of Legal Affairs	03 DHR 0308	Wade	06/25/03	
Krystal Hyatt v. Broughton Hospital	03 DHR 0316	Chess	07/07/03	
Cahterine Williams v. DHHS	03 DHR 0320	Mann	07/17/03	
Rachel Peek, Yancey Co. DSS v. DHHS	03 DHR 0330	Chess	07/24/03	
Lisa Mendez v. Health Care Personnel Registry	03 DHR 0351	Gary	06/27/03	
Twan Fields v. DHHS, Div. of Facility Services	03 DHR 0355	Morrison	09/10/03	
Kevin Douglas Heglar v. DHHS, Dorothea Dix Hospital	03 DHR 0357	Gray	09/17/03	
Yolanda Covington v. RHA Health Svcs, DHS	03 DHR 0360	Lassiter	07/17/03	
Constance Basnigh v. Pasquotank County DSS	03 DHR 0385	Lassiter	05/29/03	
Waddell B Taylor v DHHS, John Umstead Hospital	03 DHR 0394	Gray	09/23/03	
Dorothy Ann Bell v. DHHS, Div. of Facility Services	03 DHR 0437	Morrison	06/30/03	
Edmund Bond Small v. DHHS, Walter B Jones, ADATC	03 DHR 0445	Lassiter	07/21/03	
Janitta Brown v. DHHS, Dorothea Dix Hospital	03 DHR 0461	Lassiter	09/15/03	
Gerry Dwayne Cashwell v. DHHS	03 DHR 0469	Gray	07/28/03	
Gregory Lewis Berry v. Burke Co. Dept of Social Services	03 DHR 0514	Wade	08/19/03	
Donna Kay Kirkland v. DHHS, Broughton Hospital	03 DHR 0547	Wade	08/29/03	
Grace Browning v. John Umstead Hospital	03 DHR 0571	Mann	10/03/03	
Sabrina Regina Betts v. DHHS, Div. of Facility Services	03 DHR 0595	Gray	09/12/03	
Andrea Ford v DHHS, Div. of Facility Services	03 DHR 0609	Morrison	06/04/03	
Wallace C Levi v. Div. of Medical Assistance	03 DHR 0633	Wade	08/12/03	
Timothy Batts v. DHHS, Div. of Facility Services	03 DHR 0640	Gray	09/12/03	
Bestway Food's, Osama M Dari v. DOH WIC, Cory Menees, Unit Super.	03 DHR 0662	Morrison	07/28/03	
Denise A Worthington v. DHHS, Office of the Controller	03 DHR 0672	Gray	10/06/03	
Wake Radiology Services, LLC, Wake Radiology Consultants, P.A., Raleigh MR Imaging Center Ltd Partnership & Wake Radiology Diagnostic Imaging, Inc. v. DHHS, Div. of Facility Svcs., CON Sec., Robert J. Fitzgerald, Dir, Lee B Hoffman, Chief of CON Sec. & Mobile Imaging of North Carolina, LLC	03 DHR 0676	Gray	07/07/03	
Nedall H Hassan d/b/a GNS Express Mart v. DHHS	03 DHR 0695	Lassiter	10/14/03	
Samantha Jacobs v. DHHS, Div. of Facility Services	03 DHR 0697	Lassiter	06/19/03	
Jane McMillan v. DHHS, Div. of Facility Services	03 DHR 0698	Lassiter	06/19/03	
Veronica Williams v. Div. of Med. Assistance, Dana Harris, Super.	03 DHR 0737	Mann	08/28/03	
Patti L Cain Small Fries by Patti v. Nutrition Services	03 DHR 0768	Morrison	07/31/03	
Brian Keith Heilig v. DHHS, Div. of Medical Assistance	03 DHR 0779	Mann	07/17/03	
Mrs Soon Ja An v. DHHS	03 DHR 0780	Morrison	07/28/03	
Kimberly Donyelle Miles v. DHHS, Div. of Facility Services	03 DHR 0795	Lassiter	09/11/03	
Pamela Powell v. DMA Outpatient Therapy	03 DHR 0834	Lassiter	10/13/03	
Angela Carter Precious Love Turtledove v. Tarin Goodwin, St. of NC, DCD	03 DHR 0850	Connor	09/23/03	
Kimberly Roberts v. DHHS, Div. of Facility Services	03 DHR 0927	Gray	08/15/03	
Michael Hillis v. Department of Revenue	03 DHR 0935	Conner	07/28/03	
Alvin Paulk v. DHHS, Div. of Child Development	03 DHR 0971	Conner	07/25/03	
Nazih Hasan & Emao Hasan, Nes Convenient Mart v DHHS	03 DHR 0985	Lassiter	10/31/03	
Victor J Gray v Dorothea Dix Hospital	03 DHR 1039	Morrison	09/29/03	
Doris Froneberger v. DHHS, Div. of Facility Services	03 DHR 1081	Gray	09/12/03	
Heather M Wood v. DHHS	03 DHR 1083	Morrison	10/30/03	
Lisa S Lincoln, Honeybees Creative Ctr v DHHS, Nutrition Branch	03 DHR 1091	Elkins	11/13/03	
Jaris Davis v. DHHS, Div. of Facility Services	03 DHR 1136	Gray	10/07/03	
Albert Brower v. DHHS	03 DHR 1153	Wade	09/04/03	
Angela Sadler v. DHHS, Div. of Facility Services	03 DHR 1210	Conner	11/04/03	
Lisa Dupree v. NC State Veterans Nursing Home	03 DHR 1306	Lassiter	09/15/03	
Calvin Harris, Jr. v. Health Care Personnel Registry	03 DHR 1434	Wade	10/06/03	
Coastal Carolina Health Care PA d/b/a Coastal Carolina Imaging (P-6766-03) V DHHS Div of Facility Svcs, Certificate of Need Section	03 DHR 1496	Lassiter	11/06/03	
Ronald Bryan Gatlyn v. Health Care Personnel Registry	03 DHR 1655	Lassiter	10/28/03	

JUSTICE

Alarm Systems Licensing Board

Gregory L Swicegood, Jr. v. Alarm System Licensing Board	03 DOJ 0503	Morrison	05/16/03	
Alan Bradford Foehner v. Alarm System Licensing Board	03 DOJ 0709	Morrison	08/05/03	

Private Protective Services Board

Anthony Lamont Henderson v. Private Protective Services Board	03 DOJ 0502	Morrison	07/08/03	
John Lee Powell v. Private Protective Services Board	03 DOJ 0694	Morrison	07/09/03	
Howard Leon Fisher v. Private Protective Services Board	03 DOJ 0898	Morrison	08/14/03	18:06 NCR 444
William Houston King Jr v. Private Protective Services Board	03 DOJ 0899	Morrison	07/11/03	

CONTESTED CASE DECISIONS

Derrick Lee McDonald v. Private Protective Services Board	03 DOJ 0946	Morrison	08/05/03		
Jason William Kane v Private Protective Services Board	03 DOJ 1708	Morrison	10/28/03		
<u>Sheriffs' Education & Training Standards Commission</u>					
Harvey Clinton Blanton v. Sheriffs' Educ. & Trng. Stds. Comm.	02 DOJ 1202	Gray	06/05/03	18:03 NCR	222
Jonathan Mims v. Sheriffs' Education & Training Standards. Comm.	02 DOJ 1263	Gray	06/03/03	18:03 NCR	229
Joshua Phillip Grant v Sheriffs' Education & Training Standards Comm.	02 DOJ 1787	Wade	10/27/03		
Laura Dawn Watts v. Sheriffs' Education & Training Standards Comm.	02 DOJ 1926	Lassiter	05/22/03		
Allen Wilson York v. Sheriffs' Education & Training Standards Comm.	02 DOJ 2042	Elkins	05/16/03		
Fred Hines, Jr v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0428	Conner	07/29/03		
Alexander Draft: Registered Agent/Owner of A.D. Police Svcs., Inc. v. DOJ, Company Police Program	03 DOJ 0484	Mann	10/17/03		
Harvey Levale Cook v. Criminal Justice Educ & Trng Stds. Comm.	03 DOJ 0515	Lassiter	07/09/03		
Cynthia Darlene Harris v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0516	Lassiter	06/06/03		
Mary Katherine McVey v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 0517	Wade	08/11/03		
Brian Carroll Hatley v Sheriffs' Education & Trng. Stds. Comm.	03 DOJ 0649	Mann	10/02/03		
Michael Ray Walker v. Criminal Justice Educ. & Trng. Stds. Comm.	03 DOJ 1138	Lassiter	09/23/03		
Loy S. Lentz Jr v. Sheriffs' Educ. & Trng. Stds. Comm.	03 DOJ 1229	Gray	10/02/03		
<u>DEPARTMENT OF TRANSPORTATION</u>					
Chris Azar v. Department of Transportation	03/DOT 1345	Morrison	09/08/03		
<u>DEPARTMENT OF STATE TREASURER</u>					
Shirlyn D. Brickhouse v. Dept. of St. Treasurer, Ret. Sys. Div.	02 DST 2315	Chess	06/03/03		
<u>DEPARTMENT OF PUBLIC INSTRUCTION</u>					
Robert Andrew Bartlett Sr. v. Dept. of Public Instruction	00 EDC 1306	Gray	08/04/03		
Charles Wordsworth v. State Board of Education	02 EDC 0572	Lassiter	10/17/03		
Charles Eugene Smith v. Department of Public Instruction	02 EDC 1082	Mann	05/26/03		
<u>ENVIRONMENT AND NATURAL RESOURCES</u>					
Larry E. Sadler v. DENR	00 EHR 1322	Gray	07/02/03		
Lester Hill v. Person Co. Health Dept., DENR	00 EHR 1392	Gray	05/29/03		
John Burr v. Health Department, Mecklenburg County	01 EHR 1204	Gray	05/28/03		
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 2269 ¹	Chess	05/14/03		
Rosa & Eddie Brame v. DENR	02 EHR 0319	Wade	06/27/03		
Trafalgar Properties LLC v. County of Durham	03 EHR 0630	Wade	07/18/03		
Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.)	02 EHR 0887	Mann	05/28/03		
Forest Sound Homeowners Assoc, James P Hynes, Pres. V. DENR, Div. of Coastal Management	02 EHR 1078	Wade	06/09/03		
Richard S Pacula v. CAMA-Coastal Area Mgmt. Assoc.	02 EHR 1119 ¹	Chess	05/14/03		
Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt.	02 EHR 1302	Conner	05/29/03		
Lee Roy Smyre v. DENR, Div. of Water Quality	02 EHR 1509	Wade	09/05/03		
Murphy's All Land Dev Inc d/b/a Emerald Cove Town homes at Wells Lake v. DENR	02 EHR 1735	Conner	07/22/03		
Glenn Sasser v. DENR, Division of Coastal Management	02 EHR 1794	Morrison	08/28/03	18:07 NCR	485
Michael E Hendrix v. Caldwell Co. Dept of Environmental Health	03 EHR 0006	Gray	07/02/03		
Lawndale Service Ctr, Inc. C Valley v. DENR	03 EHR 0016	Lassiter	06/05/03		
Daniel W Bulla III v. Env. Health Section Stokes Co Health Dept.	03 EHR 0156	Conner	09/11/03		
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242	Lassiter	10/30/03		
Robert Calvin Wyatt Jr, Calvin Wyatt v. DENR	03 EHR 0535	Wade	07/31/03		
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0242 ²	Lassiter	10/30/03		
Nash-Rocky Mt Schools, Mark Strickland v DENR, Div of Wtr Quality	03 EHR 0254 ⁶	Lassiter	10/30/03		
Pacemaker Leasing Co v. DENR	03 EHR 0711	Conner	09/10/03		
Curtis Carney v. Pitt Co Health Dept., Env. Health Div.	03 EHR 0766	Conner	07/25/03		
J B Hooper v DENR	03 EHR 0876	Lassiter	10/22/03		
Danny L Ottaway v. DENR, Div. of Air Quality	03 EHR 0948	Gray	08/15/03		
Robert L Shepard v. Alamance Co. Health Board	03 EHR 0949	Gray	07/30/03		
Megan Powell v. DENR	03 EHR 1071	Lassiter	08/18/03		
Redditt Alexander, Ida L Alexander v. Co. of Durham, Eng. Dept.	03 EHR 1074	Morrison	07/31/03		
St. Paul's Lutheran Church v. DENR	03 EHR 1151	Morrison	10/01/03		
Connell E Purvis v DENR, Div of Marine Fisheries	03 EHR 1228	Elkins	11/06/03		
Quible & Assoc PC; Joseph S Lassiter agent for Wilma M Midgett v. DENR, Div of Coastal Management	03 EHR 1193	Elkins	11/06/03		
<u>HUMAN RELATIONS FAIR HOUSING</u>					
Sara E. Parker v. Human Relations Fair Housing	02 HRC 0621	Gray	05/16/03		
<u>TEACHERS' & STATE EMPLOYEES COMP. MAJOR MED PLAN</u>					
Alma Louise Triplett v. Teachers' & St Emp Comp Maj Med Plan	02 INS 0268	Gray	07/15/03	18:04 NCR	338
Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan	02 INS 1257	Conner	08/06/03	18:05 NCR	405
Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan	02 INS 1285	Chess	08/26/03		
Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03		
JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty.	03 INS 0811	Mann	08/28/03		
Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan	03 INS 0975	Wade	10/22/03		
<u>OFFICE OF STATE PERSONNEL</u>					
Dorris D Wright v. Cabarrus Co. Dept. of Social Services	00 OSP 1506	Gray	04/22/03		

CONTESTED CASE DECISIONS

Robert Banks Hinceman v. DHHS/Broughton Hospital	01 OSP 0827	Elkins	05/01/03	18:01 NCR	45
Robin Ritzheimer Austin v. Jim Jones, Hlth Dir, Judie DeMuth, Admin Asst & the County of Stanly	01 OSP 0888 ⁴	Lassiter	09/08/03		
Edward Allen Hughes, Jr v. Department of Correction	01 OSP 1011	Gray	08/01/03		
Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03		
James F Pridgen Jr v. A&T State University	01 OSP 2182	Gray	08/08/03		
Alan Foster v. Comm of Ag Meg Scott Phipps & DOA	02 OSP 0173	Lewis	09/26/03		
Jerry Thomas Ferrell v. Department of Correction	02 OSP 0375	Conner	09/15/03		
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:05 NCR	410
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:07 NCR	494
Terence G Westry v. A&T State University	02 OSP 1019	Conner	06/30/03		
Robert L. Swinney v. Department of Transportation	02 OSP 1109	Gray	05/07/03		
Robin Ritzheimer Austin v. Jim Jones Hlth Dir Stanly County	02 OSP 1166 ⁴	Lassiter	09/08/03		
Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03		
James Thomas Kinlaw v. ESC of NC	03 OSP 1343	Wade	10/23/03		
Norman Burton v. Chatham County	02 OSP 1483 ²	Gray	05/12/03		
Jonah Uduagbomen v. Department of Transportation	02 OSP 1597	Gray	06/19/03		
Charles M Alexander v. ESC of NC	02 OSP 1613	Chess	07/01/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1624 ³	Gray	07/23/03		
Norman Burton v. Chatham County	02 OSP 1625 ²	Gray	05/12/03		
Edward K Royal v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	02 OSP 1631	Lassiter	06/25/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 ³	Gray	07/23/03		
Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03		
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03		
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03		
Patricia Doggett v. Trend Mental Health	02 OSP 2128	Conner	07/08/03		
Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03		
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03		
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03		
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03		
Eric M Petree v. Department of Corrections	03 OSP 0116	Lassiter	06/24/03		
Monica Lynn Johnson v. NC School of the Arts	03 OSP 0180	Conner	07/29/03		
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03		
Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03		
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03		
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03		
Beverly M Jennings v. Juv Justice, Swannanoa Valley Youth Dev Center	03 OSP 0408	Chess	08/11/03		
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03		
James E. Sharpe v. Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03		
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03		
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03		
Joan Milligan, Patricia Flanigan, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03		
Ty Atkinson v M S C Center	03 OSP 0577	Conner	10/28/03		
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03		
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0599 ⁸	Chess	10/20/03		
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03		
Stanley L Ingram & Clifford Wayne Brown v. Dept of Correction	03 OSP 0629 ⁸	Chess	10/20/03		
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03		
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03		
Henry Earl Stewart v. Department of Transportation	03 OSP 0645	Lassiter	08/26/03		
Derwin D Johnson v. Department of Correction	03 OSP 0660	Lassiter	06/24/03		
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03		
Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03		
Jerry B Davis v. Dorothea Dix Hospital/DHHS	03 OSP 0678	Gray	07/14/03		
Leslie AllenWhittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03		
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03		
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769	Conner	07/17/03		
David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03		
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03		
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03		
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03		
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0862 ⁵	Morrison	09/29/03		
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0863 ⁵	Morrison	09/29/03		
Wanda Steward-Medley v Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03		
Michael L Hillis v DHHS/Office of the Controller	03 OSP 0874 ⁷	Lassiter	11/10/03		
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03		
Everette C Body v. Department of Correction	03 OSP 0885	Conner	11/12/03		
Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03		
Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03		
Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03		
David Upchurch v. DOC	03 OSP 1076	Connor	09/23/03		
Roberta Lane v DOC	03 OSP 1077	Conner	10/29/03		
Mable Lynn Kelly v. NC SEAA	03 OSP 1129	Chess	10/20/03		
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03		
Mable Lynn Kelly v NC SEAA	03 OSP 1184	Chess	10/20/03		
Marcella Thorne v Department of Correction	03 OSP 1225	Elkins	11/14/03		
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03		
Michael L Hillis v DHHS/ENCSD	03 OSP 1239 ⁷	Lassiter	11/10/03		
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1240 ⁷	Lassiter	11/10/03		
Michael L Hillis v DHHS/Eastern NC School for the Deaf	03 OSP 1241 ⁷	Lassiter	11/10/03		

CONTESTED CASE DECISIONS

Russell M Haas v Edgecombe Co Health Department	03 OSP 1261	Elkins	11/06/03
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03
Charles G Horne Jr v. DOC	03 OSP 1479	Lassiter	10/28/03
Charles G Horne Jr v. DOC	03 OSP 1480	Lassiter	10/29/03
Manuel C Fleming v Department of Revenue	03 OSP 1576	Morrison	11/12/03

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03
Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03
Keith Bagby Sr & Patricia Bagby v UNC Hospitals	03 UNC 1011	Elkins	11/07/03
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03

- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases
- 7 Combined Cases
- 8 Combined Cases

CONTESTED CASE DECISIONS

2. The anti self-referral law prohibits a physician from referring his patients to any entity in which the physician is an investor. N.C. Gen. Stat. § 90-406. The law, however, provides for the following exception:

The anti self-referral law provides for an exception to the prohibition against a doctor’s referring patients to entities in which the doctor is an investor, if the Department of Health and Humans Services determines that:

- (1) There is a demonstrated need in the county where the entity is located or is proposed to be located; and
- (2) Alternative financing is not available on reasonable terms from other sources to develop such entity.

N.C. Gen. Stat. § 90-408 (a).

3. In this case, the Agency granted such an exception to allow six physicians, doing business as Carolina Diagnostic Center, LLC (“CDC”), to refer their own patients to the diagnostic center in which the physicians are the owners and investors.

4. The Petitioner Southeastern Regional Medical Center (“Southeastern”) is the only hospital in Robeson County.

5. The Petitioner Lumberton Radiological Associates, P.A. (Lumberton Radiological”), is a radiology practice group of physicians in Lumberton, Robeson, County.

6. The Petitioners filed a motion for summary disposition in which they opposed the Agency’s decision issuing the exception and contended, in part, that, as a matter of law:

(a) The request for the exception showed on its face that the applicants did not meet the standards for allowing an exception because, *inter alia*, they did not demonstrate that the area was underserved; and

(b) The exception request did not meet the criteria of the anti self-referral law and the Agency’s rules under the statute.

7. The material facts are not in dispute.

8. The Department of Health and Human Services is authorized to determine whether a doctor (or other health care practitioner licensed under Chapter 90 of the General Statutes) may be relieved from the prohibition of the anti self-referral law, N.C. Gen. Stat. § 90-405 *et seq.*, by determining whether conditions set out in the statute for exception from the law for underserved areas are met. N.C. Gen. Stat. § 90-408 (a).

9. On or about April 3, 2002, Robert J. Fitzgerald, Director, DFS, issued a written document entitled “Exception for Underserved Areas to the Provisions of N.C. Gen. Stat. § 90-406 prohibiting Self-Referrals by Health Care Providers” (the “Exception”).

10. The Exception permits the listed doctors to refer patients to the entity named CDC the office for which was to be located at 122 Cross Street, Red Springs, Robeson County, North Carolina. See Exception.

11. The doctors on whose behalf the exception was requested are listed below, along with the town where their practice is located, and their respective share of ownership in CDC.

Santhosh Augustine, MD	Lumberton	70.0%
Herman Chavis, MD	Red Springs	7.5%
Kenneth Locklear, MD	Red Springs	7.5%
Sandhya Thomas-Montilus, MD	Lumberton	5.0%
Joseph Roberts, MD	Lumberton	5.0%
Dennis Stuart, MD	Fairmount	5.0%

See January 16, 2002 Letter to Robert J. Fitzgerald, *Re: Carolina Diagnostic Center, LLC: Application for Underserved Area Exemption*, pp. 3, 4 “Request for Exception.”

12. Based on the Request for Exception, each doctor listed above will be an investor and owner in CDC with an ownership interest equal to the percentage shown above next to that doctor's name. There are no non-physician owners. The Exception is based on the assumption that each of the doctors would be in a position to refer patients to CDC.

13. On January 10, 2003, Southeastern objected in writing to the Agency's grant of the Exception and requested that it be withdrawn.²

14. According to the Request for Exception, CDC will provide diagnostic services on an outpatient basis including laboratory tests, general radiological services, ultrasound, and mammography.

15. In addition to its other services, Petitioner Southeastern offers the following services that are pertinent to this matter: ultrasound, laboratory tests, and general radiology services. See Affidavit of J. Luckey Welsh, Jr.

16. In addition to its location at 300 West 27th Street, Lumberton, Robeson County, Southeastern operates five primary care clinics at the following locations in Robeson County:

Fairmont Medical Clinic
101 N. Walnut Street
Fairmont, N. C. 28340

Dr. Arthur J. Robinson Medical Clinic
800 Martin Luther King Jr. Drive
Lumberton, N. C. 28358

Johnson Medical Clinic
222 South Main St.
Red Springs, N. C. 28377

Rowland Medical Clinic
102 N. Bond St.
Rowland, N. C. 28383

St. Pauls Medical Clinic
128 East Broad St.
St. Pauls, N. C. 28384

17. St. Pauls Medical Clinic is located within 12 miles of the originally proposed CDC site and offers general radiology, X-ray, and laboratory services. Johnson Medical Clinic is located within two miles of the originally proposed CDC site and offers laboratory services. See Supplemental Affidavit of J. Luckey Welsh.

18. Petitioner Lumberton Radiological provides, among other services, ultrasound imaging of single and multiple body organs, mammography, and general radiology services in Robeson County. See Affidavit of Boyd B. Gasque, Jr., M.D.

19. In addition to the Petitioners, there are other existing facilities and practices in Robeson County which offer ultrasound, mammography, laboratory tests, and general radiology services. The Request for Exception stated that there were no *freestanding* providers within 15 miles of its proposed site that offered laboratory tests. (Emphasis added.)

20. The Request for Exception also stated that certain of the services, in particular ultrasound, would be offered on a mobile basis at various other locations in addition to the proposed location in Red Springs. The request did not, however, specify any of these other locations where such mobile services would be provided and thus did not demonstrate unavailability of the service from other providers in the same area. See Request for Exception, p. 7. The request acknowledged that the mobile sites may be within 15 miles of other providers of the same services. *Id.*

21. The following table shows some of the other providers in the area within 15 miles of the originally proposed CDC site (see Supplemental Affidavit of J. Luckey Welsh):

CONTESTED CASE DECISIONS

Provider	Address	Distance from CDC	Services
FirstHealth Family Care Center	923 West Third St. Pembroke NC	10 mi	General Radiology, X-ray, Laboratory
Pembroke Family Practice Center	410D S. Jones St. Pembroke NC	10 mi	General Radiology, X-ray, Laboratory
Julian T. Pierce Health Center	307 E. Wardell St. Pembroke	10 mi	General Radiology, X-ray, Laboratory
Maxton Medical Center	610 Martin Luther King Jr. Drive Pembroke NC	12 mi	Ultrasound, General Radiology, X-ray, Laboratory

22. It appears from the affidavits that the CDC has not been developed and that the originally proposed site at 122 Cross Street in Red Springs was not leased by CDC but is under consideration for lease by the Town of Red Springs for use as a community center. If the CDC were instead developed at the office of the physician investors located in Red Springs identified in the Request for Exception, this location would be less than 15 miles from both Petitioners, who combined offer all of the services proposed by in the Request for Exception. See Supplemental Affidavit of J. Luckey Welsh.

23. Because of the showing that the area is not underserved due to the nearby location of other facilities, it is not necessary to reach the question of the availability of alternative financing.

24. The anti self-referral law authorizes the Department to promulgate regulations “governing the form and content of the application ... for exemption from N.C. Gen. Stat. § 90-406, the business conduct of any such entity and the fair and reasonable access by all health care providers in such county to the entity.” N.C. Gen. Stat. § 90-408(b).

25. The Agency adopted the following rule pertinent to this Exception:

10 NCAC 3K .0102 APPLICATION

(a) An application must be submitted to the Department by any health care provider wishing to be exempt from G.S. 90-406.

(b) The application shall include the following information:

. . . .

(5) an analysis of the need for the health care service in the area sufficient to allow the Department to determine that the area is an underserved area for the particular service to be provided

10 NCAC 3K.0102 (b)(5).

26. The Agency also adopted the following rule which is applicable to the Request for Exception:

.0103 CRITERIA FOR AN UNDERSERVED AREA EXEMPTION--NEW ENTITY

(a) In order for the Department to determine that there is a demonstrated need *in the county* where the entity is proposed to be located for the designated health care services to be offered by the entity the Department must conclude that:

(1) the service or services proposed are not provided in the county *within 15 miles of the proposed site* of the entity; or

(2) any existing provider of the same service or services proposed by the new entity, *located in the county or within 10 miles of the proposed site of the entity*, is not able to provide services to all who require the service and is unwilling or unable to expand services in order to accommodate those in need of the service. The application shall provide written confirmation from the existing provider acknowledging unmet need and unwillingness or inability to accommodate it.

CONTESTED CASE DECISIONS

27. The Agency erred in granting the Exception because information provided by Petitioners established that there was not a demonstrated need in the county for the health care services because there were providers of similar services within 15 miles.

28. The Agency acknowledges that had the information provided in the affidavits of J. Luckey Welsh, Jr., CEO, Southeastern and Boyd B. Gasque, Jr., M.D., been available to the Agency, it would have found that CDC had failed to demonstrate that the county was underserved as required under the statute.

29. The petition for a contested case hearing was served on the doctors listed herein who share in the ownership of CDC, but none has appeared or moved to intervene. See Affidavit of Service by Certified Mail.

CONCLUSIONS OF LAW

1. The Agency's decision that the requirements of the anti self-referral law were met by the Request for Exception was based solely on information provided in Request for Exception. As such, the Agency's decision was erroneous.

2. In light of information presented (I) which was presented with the record of this contested case proceeding; and (ii) which conflicts with that information presented in the Request for Exception, the Agency acknowledges that the Request for Exception did not satisfy the requirements of the anti self-referral law or the Agency's rules.

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that the Exception be rescinded.

ORDER

It is hereby ordered that the Agency serve a copy of the Final Decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36(b).

NOTICE

The parties have stipulated that they consent to entry of a Final Decision by Robert J. Fitzgerald, Director of the Division of Facility Services, without an opportunity to file exceptions to this Recommended Decision or to present written arguments.

The Petitioners consent to the Agency's serving the Final Decision under N.C. Gen. Stat. § 150B-36(b) by mailing a copy to the Petitioners' undersigned attorney of record.

For the foregoing reasons, the motion for summary disposition is granted and it is hereby recommended that the Agency order approving the Request for Exception be reversed and the Exception be rescinded.

This the 31st day of October, 2003.

Administrative Law Judge
Beryl E. Wade

¹Recodified at 10A NCAC 14G .0101 *et seq.*

²Sotheastern did not receive notice of the Request for Exception. Southeastern first received a copy of the Agency's decision on December 24, 2002. The Director of DFS thereupon advised Southeastern of its right to challenge the decision by filing a petition for contested case.